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The Mirror of Justices

THE

PUBLICATIONS

OF THE

Selden Society

περὶ παντὸς τὴν ἐλευθερίαν

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Selden Society

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TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE OF THE HISTORY OF ENGLISH LAW.

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Selden Society

THE MIRROR OF JUSTICES

EDITED

FOR THE SELDEN SOCIETY

BY

WILLIAM JOSEPH WHITTAKER

Horn, Andrew.

WITH AN INTRODUCTION

BY

FREDERIC WILLIAM MAITLAND

LONDON

BERNARD QUARITCH, 15 PICCADILLY

1895

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INTRODUCTION.

Discovery of the *Mirror*

In the sixteenth century when the printing press was at work and the manuscript treasures of the monasteries were passing from hand to hand, English lawyers began to turn back their eyes to the old days when our law was first taking a definite shape. The names and the books of Glanvill and Bracton, of Britton and Hengham became current once more. Along with weightier matters there had floated down the stream of time an enigmatical treatise, *The Mirror of Justices*. The first tidings that we get of it are given us by Plowden in his report of a case that was argued before the Exchequer Chamber in the year 1550. He represents Bradshaw, the king's attorney, as contending for the rule *Testis unus testis nullus*, which may be deduced from the book of Deuteronomy; and (said Bradshaw) in ancient times the law of this realm was similar, as is expressed in the book called the *Mirror of Justices*, which was made before the Conquest.[1] The learned attorney had perhaps but cast his eyes upon the book that he thus cited; a careful examination of it he cannot have made. However, from this time forward we begin to see that manuscript copies of the book are being handed about among lawyers. Coke obtained one, and, as his habit was, devoured its contents with uncritical voracity. 'I have,' he said, 'a very ancient and learned treatise of the laws

[1] Plowden, *Commentaries*, 8.

and usages of this kingdom whereby the commonwealth of our nation was governed about eleven hundred years past.'[1]

The *Mirror* becomes classical

However, though Coke believed that he had acquired a treatise which set forth the law of King Arthur's day, he did not think that it was written in that very distant age, and he explained away the words by which Bradshaw seemed to have given it a date on the other side of the Norman Conquest. A very slight inspection of it was sufficient to show that it could not as a whole have been compiled before the reign of Edward I. Nothing daunted, the credulous Coke filled his Institutes with tales from the *Mirror*, and, for example, believed that he had a precedent of an appeal of treason which came from the days of King Edmund and in which the appellor's name was Rocelyn and the appellee's was Waligrot.[2] His final opinion seems to have been that the book was written for the more part before the Conquest, but that many things were added to it by one Horn, a learned and discreet man who flourished in the reign of Edward I.[3]

The *Mirror* on its trial

It would be long to tell how much harm was thus done to the sober study of English legal history. The Pseudo-Ingulf himself has hardly done worse. Gradually suspicions collected. It became known that the *Mirror* was to be used with some circumspection, that it was not to be put alongside of Glanvill and Britton as a co-ordinate historical authority.[4] At length the illustrious scholar who delivered us from the Crowland forger spoke out his mind about Horn and the *Mirror*: though it is 'a very curious specimen of the apocrypha of the law,' said Sir Francis Palgrave, 'we are compelled to reject it as evidence concerning the early jurisprudence of Anglo-Saxon England.'[5]

The *Mirror* printed

Meanwhile it had been put into print. This happened in 1642, a marvellously appropriate date for the appearance of a book which proclaimed as the first and sovereign

[1] Coke, Preface to 9 Rep.
[2] Third Institute, 5.
[3] Coke, Preface to 10 Rep.
[4] Reeves, *Hist. Eng. Law* (ed. 1787), vol. ii. pp. 358–9, speaks cautiously and judiciously.
[5] Palgrave, *English Commonwealth*, vol. ii. p. cxiv.

'abuse' that the king is beyond the law to which he ought to be subject. The title page of the printed book bears the words 'La Somme appelle Mirroir des Justices vel Speculum Iusticiariorum, factum per Andream Horne.' No editor is named, but a Latin note tells us in effect that the text used was a transcript belonging to one Jecell (no doubt the antiquary Thomas Jekyll, who died in 1653[1]), which had been copied from a transcript belonging to Francis Tate (another well-known antiquary) but collated with the ancient manuscript then lying in Benet (now Corpus Christi) College at Cambridge. In 1646 there appeared an English translation by W[illiam] H[ughes], which was republished in 1768 and again in 1840. In 1776 Houard included in his *Traités sur les Coutumes Anglo-Normandes* the first four of the five sections into which the book is divided; the fifth he rejected as being in his opinion a supplement added to the original work by a later hand. It is plain enough that this industrious Norman lawyer, who did much for which we ought to be grateful in publishing our English law-books to the continental world, had no text of the *Mirror* but the poor printed text of 1642, and, as he shows by his conjectural emendations, he was painfully aware of its imperfection. This indeed was known to W. H. in 1646, for he says 'And although that the Manuscript Copy be in the Originall very imperfect: the French impression' [that of 1642] is 'by misjoining of words in many places without sence, and false printed.'[2]

The unique manuscript

Several seventeenth century copies of the book, including in all probability those that were used in 1642, still exist; but Mr. Whittaker has satisfied himself that they are all derived immediately or mediately from the Corpus manuscript, and that seems to be the one and only medieval manuscript of the *Mirror*.

[1] *Dict. Nat. Biography.*

[2] Translator's preface. Houard, vol. iv. p. 469, says: 'Mais de quelque manière qu'on envisage le travail pénible que la corruption du Texte a exigé, il n'y aura surement pas un Lecteur qui ne convienne que, sans ce travail, le Texte n'a pu être jusqu'ici entendu des Anglois, et qu'il n'auroit pas été possible en France d'en tirer le moindre secours.'

Life of Andrew Horn

Our book has long been connected with the name of Andrew Horn, and therefore of Andrew Horn, fishmonger of Bridge Street and Chamberlain of the City of London, we must say a few words. Early in the reign of Edward I. there was a John Horn alderman of Bridge Ward, who served the City now as sheriff now as coroner.[1] Andrew may have been his son, and, if so, came of a good civic family. Late in the fourteenth century we again hear of a John Horn who is fishmonger and alderman.[2] Already in 1305 Andrew was married, for in that year was born to him a son, who, however, lived for but twelve weeks.[3] Andrew himself died in 1328, and we may guess from his will that he left neither wife nor child, for his property was to be divided between his brother William Horn, rector of the church of Rotherhithe, William and Simon Doggett his nephews, and Christina his niece.[4] His executors were his brother William, John atte Vyne and Master John of London, a notary. Already we hear of Andrew in 1308, when along with Richard Horn, Stephen Horn, and other fishmongers, he was sworn to scrutinise the fishmongers' baskets, and one of his own baskets was found deficient in capacity.[5] In 1315 he passed scatheless through a similar ordeal.[6] In 1320 he became Chamberlain of the City, and this post he filled until his death in 1328; but so early as 1311 he had been collecting statutes, charters, and other documents, and having them transcribed for him.[7]

The civic Chamberlain

The time at which he was called to take charge of the chamber of the City was critical. For nearly forty-four years London had been spared the terrors of a judicial eyre. In 1321 justices were sent to sit at the Tower. There they sat for four-and-twenty weeks, and even then they left their work unfinished.[8] Apparently it was in order

[1] Riley, *Memorials*, 3; *Liber de Antiquis Legibus*, 148, 154, 225; *Liber Custumarum*, i. 239, 240, 291, 295.

[2] Riley, *Memorials of London*, 371, 431.

[3] Stubbs, *Chronicles of Edward I. and Edward II.* vol. i. p. xxiii.

[4] Sharpe, *Calendar of Hustings Wills*, i. 344–5.

[5] *Liber Custumarum*, i. 120; *Liber Albus*, i. 467.

[6] Riley, *Memorials*, 116.

[7] Sharpe, *Calendar*, i. 344.

[8] *Liber Custumarum*, pp. lxxxiv, c.

to meet their advent that Horn put together some of those numerous transcripts of documents which are his best title to our gratitude. As civic Chamberlain it was his duty to be prepared with chapter and verse to support every real or supposed franchise of the City, and to answer every cavil that the king's lawyers could advance, for an eyre meant that no single privilege of the Londoners would pass unchallenged. To all seeming he did his duty well, transcribed and arranged his documents with zeal and industry. It is probably to him that we owe the valuable account of this eyre that has come dow to us.[1] As chamberlain he naturally took a deep interest in the doings of the justices, but he had a more private interest. The civic authorities and the body of lawful fishmongers were engaged in a bitter quarrel with certain men who carried on their business at the Fish Wharf in what was thought an illegitimate manner. This dispute came before the justices, and throughout it Andrew Horn seems to have acted as the spokesman of the fishmongers.[2] He has often been called a learned lawyer, but, if we put the *Mirror of Justices* on one side, the evidence that we have would lead us to speak of him rather as of a learned archivist and antiquarian than as of a pleader who had made his fame in the courts.

The London Annalist

To the little that we know for certain we must add something that has been guessed by one whose words deserve our best attention. In 1882 Dr. Stubbs published under the name *Annales Londonienses* a theretofore unpublished chronicle.[3] He took the text from a modern transcript of a manuscript which was almost wholly destroyed in the Cottonian fire. This chronicle is acephalous, and begins abruptly in the year 1194. For a long while it is but an abridgment of those *Flores Historiarum* that were formerly ascribed to Matthew of Westminster; but, as time goes on, it begins to contain matters which the writer of it seems to be supplying at first hand. In 1289 it becomes an

[1] *Liber Custumarum*, i. 285-432.
[2] *Ibid.* i. 394-409.
[3] *Chronicles of Edward I. and Edward II.*

original work; between 1293 and 1301 there is an hiatus; from 1301 to 1316 it contains, says its editor, 'a relation which is simply invaluable of the closing events of the one reign and the early troubles of the next.' 'At the year 1316 the narrative breaks off again, and the remainder of the work contains only a few memoranda of records belonging to the civil history of London at the opening of the reign of Edward III.' These continue until 1330, where the book ends. Now, that the important part of the *Annals* comes from a Londoner, and one who had access to many public documents, cannot be doubted. Dr. Stubbs has shown cause for the conjecture that this part comes from Andrew Horn. His argument is twofold. Under the year 1305 the annalist tells, among the events of national history, that a child was born to Andrew Horn, lived twelve weeks, and was buried at Coleman church. In the second place, these *Annals* contain a large number of documents which are also contained in that Liber Custumarum which Horn bequeathed to the chamber of the Gildhall.

Horn and the ecclesiastical courts

If for a moment we accept this identification of the chronicler with Horn, we shall think of the civic Chamberlain as of one who could write good, straightforward annals, a rational, observant man, interested in public affairs, and alive to the value of records and state papers. If we seek for any more distinctively personal trait, we shall find it in his constant references to the doings of the ecclesiastical courts, and to the disputes occasioned by the benefit of clergy and the right of sanctuary. This is so marked that Dr. Stubbs has thrown out the suggestion that 'Andrew Horn, if he were the author, may have held with the chamberlainship of the city some office in connexion with the Court of Arches,' and though this suggestion is set aside by its maker in favour of another, it is one that we shall have to remember.

Horn's last will

On October 9, 1328, Horn made his will, and thereby he bequeathed to the chamber of the Gildhall certain books, to wit (1) a great book *De Gestis Anglorum*, wherein are contained many useful things; (2) another book, *De*

Veteribus Legibus Angliae, together with (3) a book called *Bretoun* and (4) a book called *Speculum Iusticiariorum*; also (5) a book compiled by Henry of Huntingdon, and (6) a book *De Statutis Angliae* with many liberties and other matters touching the city.[1]

The Corpus manuscripts

It seems fairly certain that some of Horn's gifts are at this day where they ought to be, namely, at the Gildhall. It is also fairly certain that some of them passed into the possession of Sir Robert Cotton and are now represented by a volume preserved at the British Museum (Claudius, D. II.), while others can, so I think, be traced with some certainty through the hands of Archbishop Parker into the library of that college upon which he bestowed many a priceless treasure. We find there in one volume (C. C. C. 258) a copy of Britton bound up with the unique copy of the *Mirror*. We find also another volume (C. C. C. 70), which deserves our attention. It might well be called a *Liber de Veteribus Legibus Angliae*. It contains that composite body of legal materials which Dr. Liebermann has recently described under the title *Leges Anglorum saeculo XIII. ineunte Londoniis collectae*, and which, for the sake of brevity, I will call Dr. Liebermann's law-book.[2] That law-book comprised a Latin version of some of the Anglo-Saxon dooms; also the Leges Edwardi Confessoris, the Leges Willelmi, the Leges Henrici; also Glanvill's text-book, and some other matters. Its contents were hitched together into an historical sequence by some royal genealogies and brief remarks about the doings of the kings. The collector, however, depraved his materials by many

[1] Sharpe, *Calendar of Hustings Wills*, i. 344. Mr. Riley's theory (*Liber Custumarum*, i. pp. i–xxiv) was that No. 2 and No. 6 are represented by the *Liber Horn* of the Gildhall; that No. 1 is divided between the *Liber Custumarum* of the Gildhall and the Cottonian Claudius D. II. Dr. Stubbs (*Chronicles of Edward I. and Edward II.* p. xxiii) thinks that 'this identification is very much matter of speculation.' However, that the Cottonian volume is made up of sheets that came from the Gildhall is, I suppose, indubitable. Then Dr. Stubbs has conjectured that No. 5 was Henry of Huntingdon's chronicle with a continuation represented to us by the now acephalous *Annales Londonienses*.

[2] Liebermann, *Ueber die Leges Anglorum*, Halle, 1894. We have to thank Dr. Liebermann for drawing our attention to this manuscript by kind and learned letters.

mythical interpolations, which seem to have had two main purposes: first, the glorification of the City of London, its privileges and customs; secondly, the assertion of an ancient but enduring supremacy exercised by England and the English king over the whole of Britain and the adjacent islands. In Dr. Liebermann's opinion this work was put together by some Londoner of John's reign. Now in the manuscript that is before us (C. C. C. 70) we have of this book a copy written in the early years of the fourteenth century. A half-hearted attempt has been made to carry on the historico-legal discourse into the reigns of Henry III. and Edward I. In the first place, however, we must notice that at the foot of one of the pages (p. 101) we see the following legend in red ink:—'Horn michi cognomen Andreas est michi nomen.' Above this is drawn a fish. This seems to tell us that this manuscript once belonged to Andrew Horn the fishmonger.

The Liber de Veteribus Legibus

But, further, the hand which wrote this legend seems to have written a good many rubrics and marginal notes. Close to the end of the volume it gives us an important remark. The text has come down to Henry III.'s reign, and has begun in a desultory way to set forth some precedents for pleaders. Abruptly it stops, and what we may take to be Horn's hand writes as follows:—'But no more of this, for you have enough of it in the two subsequent books, namely the book called the Mirror of Justices and the book called Brethun. But these books are not sealed by the king. However, such was the form of pleading in the times of Edward I. and Edward II.'[1] We see, then, that the writer of this intends that Dr. Liebermann's law-book shall, in some sense or another, be followed by the *Mirror* and Britton.

Horn and the London law-book

At the top of the next page he tells us a little of Edward I., remarking that he made many statutes which

[1] C. C. C. 70, p. 190: 'Non erit plus nunc, quia satis habes in ij. libris subsequentibus, videlicet, libro vocato Speculum Iusticiariorum et altero libro vocato Brethun. Sed non sunt libri sigillati per Regem. Attamen taliter placitabantur [brevia] temporibus Regum Edwardi filii Regis Henrici III. et Edwardi filii Regis Edwardi.'

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are confirmed by his seal, but which are not inserted in this manuscript. He then gives a long list of the titles of Edward's statutes, observing by the way that the Statute of Westminster the Second is *peroptimum*. This list ended, he tells us that these statutes will not be set forth in this book, 'for I have them elsewhere, and I intend, please God, at some future time to compose out of this and other books a large volume, for I have thought it useful that the events of our own time should be handed down to posterity.' [1] After this he notes the names of the legal text-books produced under Edward I.: namely, Hengham, *Fet a saver*, and so on. Then he tells us that Edward I. confirmed the Londoners' privileges: 'the tenour of his charter is not in this book, but I have it elsewhere.'

All this seems to come from a man writing in Edward II.'s day, who has a great mass of historical and legal materials at his command, and some large projects before his eyes. We can hardly doubt that his voice comes to us from the chamber of the Gildhall, or that it is the voice of Andrew Horn.

Horn and the Canon Law

One of his notes seems to tell us that this London archivist is interested in ecclesiastical law, and has tried to find his way among the books of the canonists. The Anglo-Saxon law that lies before him speaks of the ordeal. He observes in the margin that this mode of purgation was condemned by Pope Innocent III. in the reign of King John, about the year 1205, 'per decretales libr. v. capitulo de purgacione vulgari.' Thereupon he sets forth a decretal of Honorius III., which appears in the Gregorian collection.[2] Then he adds that the ordeal was first canonised by the

[1] C. C. C. 70, p. 191: 'Ista statuta quorum prohemia hic intitulantur in libro isto non scribentur nec registerio, quia alibi habeo, et quia intendo ex libro isto et aliis imposterum, deo dante, magnum codicem componere, quia utile duxi posteris presencia temporum nostrorum exprimere.'

[2] It is c. 3, X. 5. 35. The blunder is not one that is easily corrected, for if we suppose that *Innocentius* is a mere clerical error for *Honorius*, the reference to John's reign and 1205 will go wrong. The true date of the decree of Honorius seems to be 1222. One would have expected a citation of the decisive decree of the Lateran Council of 1215, and the mention of Innocent and of 1205 may be due to some faulty recollection of that Council's doings.

Council of Tribur, and quotes a decree of that Council and another of the Council of Mainz, 'secundum antiquas decretales per Bernardum Papiensem compilatas.'[1] So he probably has at his command some books of canon law, though he does not seem to be an expert in their use. This indication of a smattering of canonical learning may be of some service to us hereafter.

Horn's Germanism

To one other small point Dr. Liebermann has called attention. The annotator of this manuscript had heard German speech, and held that the Germans of his day spoke the tongue which the Saxon invaders of Britain had once spoken:—'Anglorum genus primo veniebat de illa Saxonia et in diebus modernis loquuntur tali lingua sicut Angli antiqui olim loquebantur.' He then proceeds to tell us that in Germany the King stands first, then the Duke, then the Margrave, then the Landgrave, then the Count, then the Baron, then the Knight. A trifle this may seem; and, no doubt, the Chamberlain of London had occasion to converse with Hanseatic merchants; but even trifles may be of importance to us when we are investigating the genesis of a mysterious book.

The manuscript of the *Mirror*

And now we turn to the other volume (C. C. C. 258), which contains the *Mirror* and Britton bound up together. The hand which writes the *Mirror* seems to me to be a curial hand of the early part of the fourteenth century. We shall see hereafter that it is the hand of a somewhat stupid or careless clerk. The *Mirror* fills four quires of twelve folios, which are followed by a quire of four folios, the last folio being left blank. The more important capital letters and the paragraph marks are in red. There is evidence on the first folios of an intention to supply marginal rubrics. Also we can see that the rubricator's task had been marked out for him in the once ample

[1] The reference seems to be to Compilatio Prima, 5, 30 (Friedberg, *Quinque Compilationes*, p. 62). The passages which are cited appear in the Gregorian collection as c. 1, X. 5. 34, and c. 2, X. 5. 38; but in the Gregorian collection all reference to the ordeal has been carefully expunged from them. As to the action of the Councils of Tribur and Mainz, see Lea, *Superstition and Force* (4th ed.), p. 291.

margin by chalk or some similar substance, but the margin has been sadly shorn by a binder. This is the more unfortunate, for over a word that puzzles us we may now and again see a faint cross, which once referred to a correcter word written in the margin; but most of these emendations have perished under the shears.

Horn's name-verse

On the first page there stares at us in red ink Andrew Horn's name-verse:—'Horn michi cognomen Andreas est michi nomen.' It seems to me hardly doubtful that the hand which wrote this was the same hand that wrote the same words in that other manuscript which has lately been described. However, in the present case this name-verse may have a context. I wish that it were possible to set before the Society an exact facsimile of the first lines of the manuscript; but I must endeavour to find words that will describe them. At the top of the page the copying-clerk wrote *Liber Primus*. Then below this a person, whom I will call the rubricator, wrote in red ink, *Iste liber vocatur speculum iusticiariorum*. He inserted these words after *Liber Primus* had been written, for they curve round *Liber Primus*. Then come four would-be verses (three hexameters followed by one pentameter), written in black ink by the copying-clerk. Then, without any interval, comes a fifth verse (an hexameter), written in red ink by the rubricator. This fifth verse is Horn's name-verse. These five verses occupy three of the ruled lines of the book, so that the end of a verse never comes at the end of a line. The last word of the fifth, the red, verse juts out into the right-hand margin. On the next line the text of the *Mirror* begins.

The mysterious verses

Now, a great deal depends upon the question whether there is any connexion between the first four lines and the fifth. I regret that a judgment on this point must be expected of anyone who writes an introduction to the *Mirror*; but on the whole, if (postponing for a while any discussion of the meaning of these verses) we look only at their collocation on the parchment that lies before us, I think that our decision will be that from the first it was intended that the four black verses should be followed by a

fifth red verse, and that all five verses should be regarded as an integral part of the book that is called *Speculum Iusticiariorum*. It seems to me that space is left for this fifth verse as space is left for other rubrics. It seems to me that the hand that writes this verse is the hand that writes *Iste liber vocatur speculum iusticiariorum*, and that writes other rubrics on the first pages of the book. Lastly, it seems to me that this fifth verse was written by the man who wrote the same verse in the other manuscript. Putting all this together, we are brought towards the conclusion that this very exemplar of the *Mirror* not only belonged to Horn, but was produced under his direction.

Meaning of the verses

So much as to externals. And now let us grapple with the meaning of these mysterious verses. Here they are:—

> Hanc legum summam si quis vult iura tueri
> Perlegat et sapiens [1] si vult orator haberi;
> Hoc apprenticiis ad barros ebore munus
> Gratum [2] iuridicis [3] utile mittit opus.
> Horn michi cognomen Andreas est michi nomen.

Horn and ivory

What can we make of these verses? Of course, it is possible for us to detach the fifth from the other four, and to say of it that it is a mere 'name-verse' recording the fact that the codex that lies before us is the property of Andrew Horn; and, indeed, we have in the other volume evidence that Horn used this hexameter for this very purpose. But if we take this course, a difficulty awaits us when we strive to construe the four preceding lines. The first two are easy enough. They amount to this:—Anyone who wishes to study the laws and become an accomplished pleader should read this book. But what of the next two lines? What in the name of sense, to say nothing of metre, have we to do with ivory (*ĕbore*)? To my friend Dr. Verrall I owe the suggestion that the five verses must be read together, and that the mysterious Ivory of the third

[1] End of first line.
[2] End of second line.
[3] The word *iuridicis* has been deliberately erased, apparently in recent times. It is supplied from a copy of the verses which has been written at the bottom of the page by a modern hand.

is explained by the Horn of the fifth. Were there not two gates through which dreams came to mankind? Horace, Vergil, and Statius all said so. The following English version comes from Dr. Verrall's pen:—

> Read me, whoe'er the substance of the laws
> Desires to see, or plead with sage applause.
> Here Ivory's grace attracts apprentice eyes,
> While profit for the coif our book supplies.
> Horn—Andrew Horn—the author is who writes.
> (*Aside*) Thus Horn with Ivory, Truth with Grace, unites.

The writer puts an enigma before us. Dr. Verrall's last line gives the solution. Here for the apprentices at the bar are pleasant visions of the law that are not too true; here for their seniors are profitable things that are not so pretty. Horn is my name, but you have Ivory also here. Quite independently, Professor Vinogradoff has said that *Wahrheit und Dichtung* would have been a proper title for the *Mirror*.[1] Is not *Horn and Ivory* a tolerable rendering of *Wahrheit und Dichtung*?

The question of authorship postponed

The author of the *Mirror* was, as we shall soon see, capable of beginning his work with riddles and mystifications, and since we cannot say either that Andrew Horn has unambiguously asserted that he was its author, or that the composer of these verses was beyond the temptation to drag ivory or anything else into them when he was racking his brains for a word that would (or, rather, would not) 'scan,' we had better leave both chamberlain and poet out of account for a while, treat the book as one whose paternity is unknown, and try to discover from internal evidence its date, its nature, and its purpose.[2]

[1] *Villainage in England*, p. 416.

[2] Lest Dr. Verrall should be charged with conjectures of which he is not guilty, I must not omit to say that the question about which he kindly gave me his opinion was merely the question whether a meaning could be found for these verses, more especially for the mysterious *chore*. He has not said that Horn wrote the *Mirror* or professed to have written it. Several distinct theories are possible: (1) Horn wrote the *Mirror* and all five verses. (2) Horn did not write the *Mirror*; the first four verses come from its author; the fifth is but Horn's claim to be the owner of a certain MS. (3) Horn did not write the *Mirror*, but he wrote all the five verses.

The author in prison

A blunder in the edition of 1642 has hitherto concealed from view the cardinal words of the book. It is thus that the author introduces himself to his readers:—'I, the prosecutor of false judges, and by their procurement falsely imprisoned, searched out the privileges of the king and the old rolls of his treasury wherewith my friends solaced me during my sojourn.' He wishes us to believe that he has been thrown into prison by the false judges whose unrelenting enemy he is, and that while in gaol he studied charters and documents and compiled his book.

Is the imprisonment a fiction?

Is this tale true? Perhaps it may be; but let us remember that a similar tale stands at the beginning of another law-book coeval with the *Mirror*. The book that we call *Fleta* purports to have been written in the Fleet Gaol. Some have suggested that it was written by one of the justices whom Edward I. imprisoned in 1289. The thought may cross our minds that the *Mirror* is a rival book; but these two tales of imprisoned text-writers do not corroborate each other. On the contrary, they cannot but raise a suspicion that, at least in one of the two cases, the author's incarceration is a 'common form,' a literary device which will awaken interest and sympathy. At any rate we can see that a man who is going to pose as the prosecutor or sworn foe of false judges has a good deal to gain by pretending that he was imprisoned by their procurement, even though his sojourn in gaol was of that easy and improbable kind that was solaced by a perusal of the rolls of the king's court, to say nothing of the Old and New Testaments 'and the canon and the written law.' But whether the story be true or false, it is here that the author strikes the keynote of his book. He is, or wishes to be taken for, an enemy of false judges, who himself has suffered by their misdeeds.

The *Mirror* a failure

One other resemblance there is between the *Mirror* and *Fleta*. Both of them were failures; of each we have only one manuscript. On the other hand, the treatises of Glanvill, Bracton, and Britton were exceedingly successful; they are represented by numerous copies. Even of Bracton's lengthy book at least some forty costly examples

have come down to us. The *Mirror* was not taken very seriously by those who lived when it was written.

Date of the *Mirror*

When was it written? The common answer to this question is that the whole of it cannot have been compiled before the reign of Edward II. Now in some sense or another this statement must be true, for undoubtedly Edward II. is mentioned in this book.[1] But who is this Edward II.? Is he the king who came to the throne in the year 1307? We ought to ask these questions, for we ought to remember that the king who came to the throne in 1272 did not call himself Edward I. In official documents he was simply King Edward, and when he was dead such documents were wont to call him 'King Edward son of King Henry,' thus distinguishing him from King Edward son of King Edward. Again, when two Edwards had been immediately followed by a third, and it was necessary to number them, men were careful to fix the moment at which the enumeration was to begin: the reigning king was 'Edwardus *post Conquestum* tertius.' As to Edward fitz Henry, his contemporaries might call him the first or the second or the third or the fourth, according to the extent of their historical knowledge. Few, perhaps, would remember Edward the Elder or Edward the Martyr, but all men had heard of Saint Edward.

Who is Edward the Second?

What, then, is it that our author tells of 'Edward the Second'? This, that until his day the punishment of rape was mutilation. This seems to be a plain reference to a chapter in the Statute of 1285, which made rape a capital crime[2]—a chapter against which the compiler of the *Mirror* has, as we see from other passages,[3] a special grudge. And it is not unlikely that he will call our Edward the First 'Edward the Second.' He knows Saint Edward,[4] but nowhere shows any acquaintance with Edward son of Alfred or Edward son of Edgar.[5]

[1] Below, p. 141.
[2] Stat. West. II. c. 34.
[3] Below, p. 28, and Abuse 117 (p. 172); also p. 195.
[4] Below, p. 81.
[5] The editor of 1642 further argues that the book must have been written before 17 Edw. II. His argument, though it seems to me to come to a conclusion that is true,

The *Mirror* written under Edward I.

We must find better arguments. Now, our author ends his work with a criticism of statutes which are brought under review in an order that is nearly chronological. He comments on Magna Carta, on the Statutes of Merton (1236), Marlborough (1267), Westminster the First (1275), Gloucester (1278), *De Viris Religiosis* (1279), Westminster the Second (1285), Winchester (1285),[1] upon the writ *Circumspecte Agatis*, which is attributed to 1285, and upon the Statute of Merchants, which was made in the same year. The last document he calls a new statute.[2] Here he stops, and I cannot find any allusion to a later statute. Now, unfortunately for us, the age of grand legislation is nearly over by the end of 1285. Still from 1290 we have the famous *Quia Emptores*, which our author would have regarded as a sovereign abuse;[3] from 1295 we have the *De frangentibus prisonam*, which he ought to have mentioned had he known of it,[4] while the *Confirmatio Cartarum* of 1297 with its new clauses, and the *Articuli super Cartas* of 1300, would have afforded him abundant materials for criticism and cavil. On the whole, it seems to me that if this book had been newly put into our hands and we had never heard of Andrew Horn, we should have said that it was written very soon after 1285, and probably before 1290. And here it may be noted that if we attribute it to this time we attribute it to the only, or almost the only, time in English history when a sweeping denunciation of the king's justices as perjurers, murderers and thieves would have had enough truth in it to be plausible and popular. This is the time of our one great judicial scandal, for though

rests upon several propositions that I believe to be untrue: namely, (1) that the document known as *Praerogativa Regis* is a statute; (2) that its date is 17 Edw. II.; (3) that the author of the *Mirror* is incapable of representing as an 'abuse' what is the existing law of the land. As to the first two of these premises, see *Engl. Hist. Rev.* vi. 367. The third is contradicted by almost every page of our book.

[1] Below, pp. 27, 48. This, however, does not appear among the statutes criticised in the last book.

[2] He gives his last section to 'the new statute about debts.' This may be the Statute of Acton Burnel (1283), but, since he mentions it after Stat. West. II. and *Circumspecte Agatis*, it is more probably the supplementary *Statutum Mercatorum* of 1285.

[3] Abuse 151 (p. 175) and p. 181 (c. 32).

[4] Below, pp. 150, 156 (Abuse 8).

the justices and clerks who suffered in 1289 may not have been worse men than were some of their predecessors and successors, the exposure of judicial iniquities on a large scale is a unique event. Also we shall see hereafter that the political ideals of our author were such as were becoming antiquated even in Edward I.'s day. However, we must once more repeat that we have before us a man who is quite capable of deliberately mystifying his readers.

No traces of an older time

For arguments to prove that the *Mirror* was not compiled in the days before the Conquest there can be no need at the present time. But, further, it does not look in the least like an old treatise that has been re-edited by a more modern hand. To those who are learned in the history of the French language, more especially of that dialect of it which was current in England, we must leave all criticism of words and grammatical forms; but any traits that would point to a time before Edward I.'s reign have been sought in vain. Express references to his statutes are found in all parts of the book,[1] while almost every sentence in it, though Cnut or Alfred or Arthur may be mentioned, has its point in the thirteenth century and in no earlier age. In particular we must decisively reject the theory that the last section of the work—that which deals with 'abuses'—has been tacked on by an editor or continuator to the end of a previously existing book. We have been carefully prepared by the author himself for this last section. His plan is to lay down in one of the earlier sections some doctrine which, as he knows full well, is not the doctrine of King Edward's court, and then to state in the last section that the prevailing doctrine is an abuse, or that Alfred hanged a judge for maintaining it. From first to last he is making an attack on 'false judges.'

The author's ignorance of old law

If he knew anything at all about the law of the Anglo-Saxon or of the Norman time, he has studiously kept his knowledge to himself. This is one of the difficulties which

[1] Below, p. 27, Statute of Winchester; p. 28, Statute of Westminster II.; p. 48, Statute of Winchester; p. 52, Statute of Westminster I.; p. 66, Statute of Westminster II.; p. 138, an ordinance of Henry III.; p. 141, Statute of Westminster II.

meet us if we try to identify him with Andrew Horn, who before the end of his life had at his command the law-books of the twelfth century and a Latin version of the Anglo-Saxon dooms. I do not think that the *Mirror* contains one sentence that has been taken at first hand from the so-called Leges Edwardi Confessoris, Leges Willelmi, or Leges Henrici, to say nothing of the laws of Cnut or of his predecessors. What is more, if we consider the would-be antiquarianism of this book, we must pronounce it to be marvellously innocent, not only of real historical research, but of traditional legendary learning. We have nothing of Brutus, nor of the metropolitan relation which Troy bears to London; not much of Arthur;[1] nothing of Edgar; nothing of the tripartite division of England between Danish, Mercian, and West Saxon law. Saint Edward is not made the hero of the tale;[2] the Norman Conqueror shows no preference for the Danelaw: indeed, the Norman Conqueror is never named. Our author's hand is free, and he is quite able to do his own lying for himself, without any aid from Geoffrey of Monmouth or any other liar. He will not merely invent laws, but he will invent legislators also; for who else has told us of the statutes of Thurmod and Leuthfred?[3]

The author's wilful falsehoods

The right to lie he exercises unblushingly. Now and again we may see traces of some little circumspection. A good instance is given us by the daring fable about the forty-four false judges whom Alfred hanged in the space of a year.[4] He is going to know the names of these judges, and he thinks that he had better not give them the names current in the England of his own day. Henry, John, Richard, Robert, Ralph, Roger will not do. So let them be Watling, Billing, Bermond, and so forth. Watling Street, Billing's Gate, and Bermond's-eye give him useful suggestions. Botolph, Cuthbert, Dunstan, Cede seem pretty safe to a man who goes to church. There is no one to tell him that

[1] See below, p. 3.

[2] He appears on p. 81 as protecting the villains and doing vengeance on those who persecute them.

[3] Below, pp. 107, 152. Can it be that the mysterious Leuthfred was a kinsman of Pope Eleutherius for whom Dr. Liebermann's Londoner forged a famous letter?

[4] Below, p. 166.

he had better keep clear of Scandinavian names (and somehow or another he has collected a good many of them), or that Yve and Tristram and Talebot look a little too French or romantic. And then as to the names of the towns whose suitors are to be sent to the gallows, he chooses Dorchester, Cirencester, and Ancaster. If names ending in *chester* are not old, what names are? Let us remember among the exploits of Alfred that he hanged Horn [1]—'Horn michi cognomen.' But even the rudimentary caution that we see in this choice of names is rare. Our author knows nothing and dreams nothing of a time before feudalism and knights' fees, of a time when as yet trial by jury had not been invented. If he has heard or read of ancient law, of thegns and ceorls, of *bót* and *wer* and *wíte*, of *griðmund*, he leaves all this outside his story.

Imaginary legislation

Unless fortune has served him or us very ill, we must hold that he did not scruple to invent tales about times much later than those of Alfred. He ascribes a good deal of legislation to Henry I.,[2] Henry II.,[3] Richard,[4] John,[5] and Henry III.[6] Some of the tales that he tells of them are not obvious anachronisms; but this general rule holds good, that he says what others have not said and does not say what others have said. For laws of Henry I. (and of Henry I.'s name he is very fond) he does not go to Henry of Huntingdon, nor to William of Malmesbury, nor even to the Leges Henrici; for laws of Henry II. he does not go to the Gesta, nor to Hoveden, nor to Diceto, nor to Glanvill's book. He does not go to Glanvill's book even when he is going to speak of Glanvill.[7] He is not corroborated; he scorns corroboration.

[1] Below, p. 168.

[2] Below, p. 14, security for prosecution; p. 14, curtesy; p. 50, appeal of homicide; p. 59, imprisonment; p. 64, mainprise; p. 64, suit of witnesses; p. 126, mesne process; p. 136, false appeals; p. 136, mainprise; p. 140, year, day and waste; p. 141, pleading.

[3] Below, p. 32, tournaments.

[4] Below, p. 132, petty larceny.

[5] Below, pp. 35-6, appeals by approvers.

[6] Below, p. 34, sanctuary. This ascription to Henry the Third (the Second?) of a law made at Clarendon touching sanctuary seems to be occasioned by a passage in Bracton, f. 136, which our author misunderstood. See also p. 52.

[7] Below, p. 31, deodands; p. 65, novel disseisin; p. 72, replevin; p. 141, pleading exceptions.

His leading motives

If now we ask for his motives, we had better for a while use the word *motive* in the sense that Richard Wagner has made familiar. No other law-book is so like 'the art-work of the future.' It is constructed out of a few leading motives, each of which is frequently reintroduced in some new key with more or less ornament and embroidery. We might pick these out and label them as 'the false judge motive,' 'the Hebraic *talion* motive,' and so forth; but any reader will soon see that he can do this for himself, and will find the task amusing. Only of a few main themes shall we here speak.

The religious motive

A strong religious strain runs through his work; indeed, the whole book might be marked *Religioso*. Of course in a medieval law-book, albeit a book of temporal law, we expect to see courteous words about Holy Church and her jurisdiction, even though some of the extreme claims of the ecclesiastical courts are being strenuously resisted. Nor are we surprised when Bracton in fervent phrases preaches a sermon against the corrupt judge and threatens him with everlasting torments.[1] We have something very different in the *Mirror*, something that we shall hardly find elsewhere, least of all in ecclesiastical law-books, for we shall not go far wrong if we call it Puritanism. There is a curious trait of bibliolatry,[2] a tendency to collect precedents out of the Old Testament and to find legal maxims in the ancient laws of the Hebrews, a tendency which the medieval Church very wisely repressed, for it leads to a justification of the judicial combat by the precedent of *David* v. *Goliath*[3] and an acceptation of 'Eye for eye and tooth for tooth.'[4] But, further, our author chooses to regard every breach of the law as sin. It is of sin that he will write even though this brings him to the flagrant absurdity of a classification of sins as 'real, personal, and mixed.'[5] Religion, morality, law, these are for him all

[1] Bracton, ff. 2, 106.
[2] See below, pp. 2, 3.
[3] Below, pp. 77, 109.
[4] Below, pp. 49, 143. Therefore it is that (p. 184) 'imprisonment should only be adjudged where there has been wrongful imprisonment.'
[5] Below, p. 49. Even in his application of these adjectives to actions he seems to depart widely

one; they are for him law. He knows nothing of the distinction, which any canonist would have taught him, between the *forum externum* and the *forum internum*. Hence his enormous and intolerable extension of the boundaries of larceny[1] and perjury.[2] Whatever is morally as bad as theft is theft, and should be treated as such. Hence also the freedom with which he can give the name of law to some rule directly contrary to that which King Edward's courts are enforcing. What I think right is right; what is right is law; any divergence from the rule of right is an 'abuse' of the law, even though courts and legislators may be guilty of it.

The author no cleric

What we find is religiosity real or assumed; it is not ecclesiasticism or sacerdotalism, it is not high-churchmanship. The distinction that is here indicated by terms that may not be very apt is none the less one on which we must insist. In the thirteenth century there were quarrels enough between Church and State, quarrels about matters which any writer of a legal text-book would have to mention: for example, about the privilege of sanctuary and the benefit of clergy and the writ of prohibition. Now it will seem to us that with these matters the *Mirror* deals pretty fairly.[3] It does not violently champion the cause of either party.[4] It holds that the Great Charter and the Statute of 1275 are defective in not providing a punishment for justices who are remiss in delivering accused clerks to their ordinaries, or who poach in the ecclesiastical coverts.[5] On the other hand, I cannot think that the following sentence came from one who was an ecclesiastic or an ecclesiastically-minded man:—'It was forbidden [among the fundamental laws of the realm] that any bishop should ordain as clerks more laymen than are necessary to serve the churches, so that the king's jurisdiction may not be decreased or diminished.'[6] And again:—'The

from the traditional English use of words. He would make all turn on mesne process, but of mesne process he has theories that are all his own.

[1] Below, pp. 25–28.

[2] Below, pp. 16–19.

[3] The passage about sanctuary, p. 34, seems to fall short of the demands of the clergy. See also Abuse 22 (p. 157).

[4] Below, pp. 92–3.

[5] Below, pp. 176, 185.

[6] Below, p. 14, and Abuse 109 (p. 171).

articles [in *Circumspecte Agatis*] which would compel parishioners to enclose churchyards, to make oblations, to give mortuaries, to pay money for confessions, or for the blessed bread, for roofing the churches, for chalices, lights, holy vestments or other ornaments of the churches, are founded rather on covetousness than on the amendment of souls, since the parsons of the churches are to be reprehended in this respect, not the parishioners, and are to be charged for these things to the extent of one-third of their tithes.'[1] This surely is the work of a layman. We seem to hear in advance the voice of the modern Nonconformist who objects to compulsory church-rates and relies on 'the tripartite division of tithes.' It comes from a man who, despite Pope and General Council, would like to see 'the judgment of God' re-established among us.[2]

Distinctive religiosity

Let it not be supposed that this obtrusive religiosity is a common feature of medieval law-books. It is nothing of the kind; it is a very distinctive feature of this book. No doubt in sound and practical treatises we may find religious reflexions, references to Holy Writ, and now and again some fragments of dogmatic theology. But it was no more the fashion in the middle ages than it is the fashion nowadays for a lawyer or for anyone else to speak habitually as if law and law-courts and parliaments existed for the purpose of saving the souls of sinners.[3] Not every book is typical of the age in which it was produced. Every age has had its prophets, its eccentrics, and its paradoxers.

Is the religiosity genuine?

Now the Puritanism, the edificatory design, the unctuous language, may be unaffected. On the other hand, all this may be cant; or, again, it may be a convenient artistic

[1] Below, p. 199. See also Abuse 110 (p. 171): clerks who have abandoned the world ought not to hold lay fee. The word *clerks* seems to show that this is aimed, not at the monks, but at the secular clergy. If so, this is Puritanism. See also p. 183: 'A clerk has no more right to sin with impunity than has a layman.' A staunch upholder of ecclesiastical privileges would have said that this last sentence hovered between truism and heresy.

[2] Below, p. 110, and Abuse 127.

[3] See *e.g.* p. 49, where an appellor desires to drive the appellee to salvation, and p. 59, where the king is bound by his office to chasten sinners to salvation, and p. 155, where parliaments are to be held twice a year for the salvation of the souls of sinners.

drapery. By assuming the garb of the preacher, and boasting his familiarity with inspired books, this writer may be forging a title to lay down for law whatever rules he would like to enforce, and to tell tales that are not easily credible. So let us be upon our guard.

The canonical motive

Then we may see a tendency to dabble in the Canon Law, and yet may be sure that our author is not an instructed canonist. He probably could command a copy of the *Decretum*. His queer account of divination takes us back ultimately, if not directly, to a passage of St. Augustin that Gratian has excerpted.[1] From the same source he has obtained a proof that homicide can be committed by word as well as by deed: a proof which, in passing, seeks to explain the apparently discrepant statements as to the hour of Christ's death that are contained in the Gospels.[2] Once he cites 'the canon itself' as to the position of serfs who have been ordained, a topic about which there is much to be found in the *Decretum* and the *Decretales Gregorii*.[3] From some canonical text-book he has borrowed the classical definition of affinity; but this he could come by easily.[4] It is not impossible that the title of his book was suggested to him by the work of William Durant, the celebrated *Speculum Iudiciale*, which soon earned for its author his well-known title 'Speculator.' The first edition of this book was, we are told, compiled before 1276, the second before 1287,[5] and it very soon won a foremost place in the libraries of all practising canonists. On the other hand, it is possible that our author, who, like Andrew Horn,[6] believed that the English were Saxons,[7] and could talk about the law of Germany,[8] had heard the name of a famous German law-book, the Saxon Mirror (*Sachsenspiegel*) of Eike von Repgau,[9] and it is a curious coincidence that German historians are now telling us that Eike's

[1] See below, p. 16.
[2] See below, p. 23.
[3] See below, p. 78.
[4] See below, p. 21.
[5] Schulte, *Geschichte des canonischen Rechts*, ii. 149.
[6] See above, p. xviii.
[7] Below, p. 6.
[8] Below, p. 46.
[9] The date of this book is not very certain. Schröder, *Deutsche Rechtsgeschichte*, p. 622, places it between 1215 and 1235.

statements of law bear a markedly 'subjective character,' or, in other words, do not accurately represent the actual practice of the courts of his own day. There is a faint resemblance between the beginning of our *Mirror* and the beginning of the *Sachsenspiegel*, and our author might well have called his book *Speculum Saxonicum*, so positive is he that all that is English is Saxon.[1] However, the word 'Mirror' lay ready to the hand of anyone who desired a title for a manual of theology, law, or any other science.

The author no canonist

But, to return from a digression, we shall not easily believe that our author is an expert in the law of the Church. Had he been this, he would assuredly have shown us his hand by some scientific citation. Your professional canonist would hardly have admitted that the sun shone at noonday without sending you to Gratian for the proof, and would never have written pages about law without one *ut Extra*. Besides, the ideas which attract our English Speculator in the books at which he glances are the mere curiosities. He is pleased with the notion that the Almighty made Moses a doctor[2]—*utriusque iuris*, we suppose—and that Christ 'sat in his consistory' to judge the woman taken in adultery.[3] Augustin's detailed account of heathen magic strikes his eye,[4] and so does that apology for the seeming variance between evangelists which is also a lesson in the law of homicide.[5] He is fascinated by the idea of heresy as *crimen laesae maiestatis divinae*,[6] and though there are no heretics in England, or none worth persecuting, he likes to imagine an 'appeal' of heresy; it would be a picturesque event;[7] almost as pic-

[1] Compare the prologue *Dieu tout pussant* of the *Mirror* with the prologue *Got die dar is begin unde ende aller dinge* of the *Spiegel*. The prologue done, the Englishman describes the division of England among forty Saxon counts; the German sets forth the titles of the Saxon nobles, though this account of them does not, it is said, belong to the first edition of his work. In suggesting that the author of the *Mirror* may have glanced at the *Spiegel*, we are not of necessity attributing to him a knowledge of the German tongue, for we are told that Eike wrote his work in Latin before he produced the German version that has come down to us.

[2] Below, pp. 5, 123.

[3] Below, pp. 43–4.

[4] Below, p. 16.

[5] Below, p. 23.

[6] Below, p. 15.

[7] Below, pp. 59, 60.

turesque as the indictment of Nolling for a sacrifice to Mahomet.[1] But of the strict scholastic method, the laborious logic that he would have learnt in a school of canon law, there is no trace. Here, as elsewhere, we see the amateur. He has caught hold of some doctrines of *infamia*[2] and of 'notoriety,'[3] and of the various kinds of ignorance which Bracton had wisely left on one side. He would like to be taken for a well-read decretist; but really his canonical lore seems to be of the kind that an outsider would pick up pretty easily if he haunted the consistories and now and then glanced at a handbook. The confusion between 'capital crimes' and 'mortal sins,' the talk of 'mortal actions' and 'venial actions,' of 'real, personal, and mixed sins,' the attempt to force upon our temporal law the distinction between 'notoriety in fact,' and 'notoriety in law,' the attempt to represent the suitors in the local courts as 'judges ordinary': all this, if it be not a display of mere ineptitude, is a display of a perverse originality which amuses itself by playing havoc among technical terms. And at this point we remember that Dr. Stubbs, without mentioning the *Mirror*, threw out the suggestion that Andrew Horn may at one time have held 'some office in connexion with the Court of Arches.' The Canon Law of this book looks like the Canon Law of some aspiring usher, who adorns his conversation with the cast-off phrases of those learned doctors to whose discourses he is compelled to listen.

Roman Law in the *Mirror*

So with his Roman Law. Almost all the Romanesque tracks in his book, and they are many, lead us in the first instance to Bracton, with whose work he certainly was familiar. Indeed, but one passage has caught my eye in which he distinctly betrays a knowledge of a Roman text that he could not have obtained from Bracton. This is the definition of theft. Let us compare the three following passages:—

> Institut. 4. 1. 1. Furtum est contrectatio rei fraudulosa vel ipsius rei vel etiam usus eius possessionisve.

[1] Below, p. 60. [2] Below, p. 133. [3] Below, p. 122.

> Bracton, f. 150 b [Fleta, p. 54]: Furtum est secundum leges contrectatio rei alienae fraudulenta cum animo furandi invito illo domino cuius res illa fuerit.
>
> *Mirror*, p. 25: Larcin est prise dautri moeble corporel trecherousement contre la volunte celi a qi il est pur male gaigne de la possession ou del us.

It seems fairly clear that the compiler of the *Mirror* combines Bracton with the Institutes. He restores the *usus eius possessionisve*, which Bracton had advisedly suppressed, and yet retains Bracton's *invito domino*. However, this one instance would be an insufficient cause for allowing him even a copy of the Institutes. The classical definition of *furtum* he might find in many places. And so when he talks nonsense (for nonsense it is, if he is describing the English law of his own day) about the double damages paid for theft and the fourfold paid for robbery,[1] we gather that he has heard just enough of Roman law to make this rubbish possible. But of any study of the Roman books we can see no evidence, while it is almost incredible that he had ever been through a school of professional legists.[2]

The imperialist motive

And yet he is the man who writes what may in one sense be called the most Romanistic passage that is to be found in any English book. Not only as a matter of general theory does he attribute force to 'the written law'[3] and place the Emperor on a level with the Pope and above all kings[4]—Bracton, with Azo's work before him, had been careful to exclude imperial pretensions[5]—but he has the sublime impudence to say that a chapter of an English statute, which he particularly dislikes, is void because it has not received the sanction of Pope or Emperor.[6] This doctrine of imperial supremacy he may have heard from a civilian or from a German merchant. Had it gained a foothold in England a 'reception' of Roman law would have been imminent. But we have here only a dream,

[1] Below, p. 150.

[2] The talk about homicide committed by negligent physicians (below, p. 137) is not due to Bracton, and some phrases in it remind us of Instit. 4. 3. §§ 6. 7.

[3] Below, p. 5.

[4] Below, p. 123.

[5] Bracton, f. 5 b, 107.

[6] Below, p. 195.

and one that came through the ivory gate. The orthodox English doctrine, among men who cared to have any doctrine at all about so obvious a matter, was that the king of England was within his realm an emperor *vel quasi*.[1]

The *Mirror* and English law-books

It seems plain that this man has Bracton at his elbow. There are in his book passages that might have been borrowed from Fleta or from Britton. But I think it clear that he has gone to the fountain-head. We will take for example his academic discourse on homicide and the kinds thereof. The very practical Britton has no such discourse. Fleta has abridged that which he found in Bracton, who in his turn had borrowed from Bernard of Pavia.

> *Mirror*, p. 22: Homicide est occision de homme par homme fete. *Car si par beste ou mescheaunce adunc nest pas homicide.* Cest pecchie chiet en ij. maneres: par langue e par fete. Par langue en iij. maneres: par conseil, comandement e defense.
>
> Fleta, p. 33: Homicidium est hominis occisio ab homine nequiter facta. et potest quis corporaliter occidi facto et lingua: facto,—iustitia, necessitate, casu et voluntate; lingua,—praecepto, consilio, defensione.
>
> Bracton, f. 120 b: Et est homicidium hominis occisio ab homine facta, *si enim a bove, cane vel alia re non dicetur proprie homicidium*. . . . Species homicidii sunt plures. . . . lingua vel facto. Lingua, tribus modis. . . .
>
> Bernardus Papiensis: Homicidium est hominis occisio ab homine vel ab hominibus facta, nam et si quatuor vel plures homines aliquem vulneraverint et ipse inde mortuus fuerit omnes qui eum vulneraverint homicidae reputantur . . . Species homicidii plures sunt . . .

The remark that, if a man is killed by a beast, this is not homicide, is common to the *Mirror* and Bracton; it does not come from Bernard; it is not received by Fleta.[2]

[1] See Rishanger, *Chronica et Annales* (Rolls Ser.), p. 255: 'quia hic censetur Imperator.'

[2] In a forthcoming book Bracton's text will be compared with Bernard's.

Was Britton used?

That Britton as well as Bracton was used is possible, but cannot, so it seems to me, be proved. The most striking coincidence is the following. Britton has told a tale about one Robert Walerand, who was a prominent justice and a royal favourite in the last days of Henry III.[1] As I understand Britton's words, they mean that to Robert Walerand was due an ordinance which gave the king the wardship of the lands of all born fools. We find the same story in the *Mirror*.[2] However, Walerand was a distinguished man, and the story has its point in the well-attested fact that his own heir was an idiot,[3] so that his connexion with the ordinance would be easily remembered, and we need not be surprised if it is mentioned a few years after his death by two independent writers. The author of the *Mirror* will mix some true tales with his fables.

The *Mirror* and Bracton

It is difficult to say what English law-books he has or what he has not used, for he borrows nothing without distorting it. His procedure may be illustrated by what he writes about the crime of mayhem. He seems to have Bracton's account of the law before him, but he adorns it by attributing certain dicta to three ancient judges whom he calls Turgis, Senwel, and Billing.[4] Whether this is the same Billing that King Alfred hanged he does not tell us, and the question is unanswerable, for Billing is the creature of his brain. He is borrowing from Bracton, and concealing the enforced loan by romance.

Suppression of Bracton's name

When once we have been persuaded that our author has been studying Bracton's book, our estimate of his knowledge of law of any sort or kind, whether Roman, Canon, or English, will not be very high. 'Action nest autre chose qe loiale demande de son droit';[5] this we say comes from the Institutes until we see that Bracton has already borrowed it.[6] As to English law, it seems to me that when the *Mirror* makes any statement that is sober and verifiable and yet is a statement that goes beyond that

[1] Britton, i. 243.
[2] Below, p. 138.
[3] *Engl. Hist. Rev.* vi. 369.
[4] Below, p. 24. Compare Bracton, f. 145.
[5] Below, p. 43.
[6] Bracton, f. 98 b.

sort of knowledge which every layman may have of the law of his own time, the source of that statement is Bracton. That Bracton's name should nowhere occur in the book (though Bracton's hero, Martin of Pateshull, is mentioned [1]), that is exactly what we might expect. The man who professed to have read records that never existed was the very man to conceal the name of the writer from whom he learnt almost all that he knew.

Wilful mis-statements of law

That he deliberately stated as law what he knew was not law, if by law we mean the settled doctrines of the king's court, will be sufficiently obvious to anyone who knows anything of the plea rolls of the thirteenth century. If at the present day a man wrote a law-book and said in it, 'Law forbids that murderers should be hanged; estates tail cannot be barred; bills of exchange are not negotiable instruments,' he would be guilty of no extravagance for which a parallel might not be found in the *Mirror*. Let us take for example the following sentence: 'The law also forbids that anyone should lease or take to farm land, or fee, or possession for any term of years beyond the term of forty years, and that any contracts should be made for a perpetual fee farm, or for any term at a higher rent than the fourth part of the annual value, and that any woman should be endowed of the advowson of a church.' [2] One word is wanted to make this true; the word 'not.' Our author knows that as well as we know it. Let us take another example. 'If rent, suit, or other service due to any lord from his fee be in arrear, the tenant is not to be distrained by his movable goods.' [3] This statement was as false in Edward I.'s time, as obviously and notoriously false, as it would be if it were written nowadays. But the author has a feudal fad; instead of distress he wants to see proceedings taken by the lord in his seignorial court. A quantitative analysis of his work which would accurately distinguish all that is true from all that is false we can hardly make. We are naturally unwilling to contradict

[1] Below, p. 147. [2] Below, p. 75; see also p. 164.
[3] Below, p. 129; see also p. 175.

flatly a man of a remote age who talks to us about the law of his own time, and so this man has been able to trade upon our diffidence and ignorance. But, when once we know his character, we shall begin to suspect that those passages in his book which successfully stand a comparison with plea rolls and honest treatises are the most deceptive, having been designed for the very purpose of inducing us to swallow the fables that lurk amongst them.

Absence of lawyerly interest

For this reason it is hard for us to estimate the extent of his legal knowledge. He is wilfully and of set purpose misplacing his 'nots.' But of a lawyerly interest in law we see very few signs. He does not love to argue, as Bracton loves to argue. He takes no delight in a nice case or a moot point. When we do get from him anything that by courtesy could be called a legal argument, it is fantastic or it is puerile,[1] and this we say judging it, not by any standard of our own day, but by the standard set by Glanvill and Bracton, by Britton and Hengham.

The parliamentary motive

His political theory is simple. He is strongly opposed to an unfettered monarchy and to a king who is above the law. But his ideal of the body which is, or ought to be, a check upon the king, is quaint and impracticable. He first puts it before us in the guise of ancient history. We must go back to 'the coming of the English.' Further back than that we need not go. He is as ardent a Teutonist as was the late Mr. Freeman; more ardent, for of the Norman Conquest he says no word. Of British, of Scandinavian, of French elements in our history, he will know nothing. The very name of William he ignores. And yet how came he to be writing in French of English law? He can, indeed, allude to the times of King Arthur,[2] but, at all events for political purposes, 'the coming of the English' gives us the requisite *tabula rasa*. God abated the pride of the Britons, and handed over the land to those 'humble and simple' Saxons who came from the parts of Almain. These Saxons had forty sovereigns, who in course

[1] See *e.g.* p. 162 (Abuse 73). See also the marvellous mistake about *realiter* on p. 190.

[2] Below, p. 3.

of time chose a king to reign over them. Then the kingship became hereditary, and the forty princes became the king's *comites* or counts. Each of them governed a county.[1] A parliament of counts or earls meeting twice a year in London,[2] which aids the king in governing the people and hears all causes in which the king is defendant,[3] seems to be our author's political ideal:[4] a curiously oligarchic and aristocratic ideal. Even of the barons we read very little, while the prelates seem to have nothing to do with temporal affairs. Of the representation of shires and boroughs we have no syllable; no syllable of the right of the community of the land to take part in legislation or even in taxation. The ideal is a belated ideal even in the days of Edward I.; indeed, we may doubt whether at any time a council of forty earls ever stood in the political programme of any English party. But then we do not know that our author is serious. Is it not all a dream?

The equalitarian motive

He shows some curious leanings towards liberty and equality, an intense and a very unmercantile dislike of imprisonment, more especially imprisonment for debt;[5] a tendency to argue that the lord owes just as much to his man as the man owes to his lord; a desire to give the bailiff just the same remedy against the master that the master has against the bailiff. He holds that the villains are being unjustly treated. For all this, however, he is neither demagogue nor socialist. The feudal arrangement of society is for him a sacred, primeval, unalterable arrangement. He does not denounce it as modern or alien. It was established here immediately after 'the coming of the English.' Knights' fees and wardship in chivalry and seignorial justice were among the first institutions of 'our holy predecessors.' He is decidedly opposed to that free alienation of land for which Bracton argued warmly. Indeed, at many points he appears as a stricter feudist

[1] Below, pp. 6–8.
[2] Below, pp. 8, 155.
[3] Below, p. 7.
[4] Below, p. 36. King John legislates with the assent of the earls.
[5] Below, p. 164 (Abuse 81); p. 179 (c. 29); p. 184: 'imprisonment should only be adjudged in case of wrongful imprisonment.'

than Bracton was. He has exceedingly severe notions concerning fealty and homage; the tenant may easily forfeit the land, the lord may easily forfeit the seignory.

Absence of civic pretensions

With Andrew Horn, fishmonger and citizen, in our minds, we naturally are on the outlook for any phrase which may exalt the City of London or magnify civic privileges or civic pretensions. Especially will this be so if we remember that Horn possessed and annotated a copy of what I have called Dr. Liebermann's London law-book, a book whose compiler was ever tampering with his texts in order that he might advocate some claim dear to the hearts of London citizens. But, if I am not mistaken, there is only one matter about which the author of the *Mirror* speaks in the municipal key. That is the residence of aliens within the realm. He holds that a foreigner should not be suffered to dwell here for more than forty days without being put in frankpledge.[1] A claim of this sort is a distinctively urban or municipal claim, and is urged in the London law-book at the expense of historic truth.[2] On the other hand, we may find in the *Mirror* a passage which, if written by a London citizen, is either marvellously impartial or marvellously well devised for the purpose of throwing hunters off the trail. It is explained to us that the ancient liberties which are guaranteed to the City of London by the Great Charter are only such liberties as have been lawfully granted and confirmed by the kings and have not been forfeited by abuse. Also we are told that no distinction in this respect is to be drawn between London and other places.[3] Not a word of Troy, but a confession that Londoners hold their franchises by royal grant and may forfeit them, and then a confession that the great city is at most *prima inter pares*. Our author does not like franchises, whether seignorial or municipal. Franchises are inequalities, and he is for equality.

No mercantile motive

Again, we can catch no specifically mercantile strain, no enhancement of the law merchant at the expense of the

[1] Liebermann, *Leges Anglorum*, p. 13.
[2] Below, p. 156 (Abuse 6); p. 180 (c. 30).
[3] Below, p. 177.

common law. On the contrary, our compiler has a marked hatred for King Edward's 'new' mercantile statute.[1] It allows imprisonment for debt. So doing, it infringes the law of nature and the law of God. It must be confessed that if this book comes from a London citizen and a wealthy fishmonger, he has allowed his own private theories and fancies to override the interested opinions and prejudices of the class to which he belongs, or else—for we must take nothing for granted—knows how to perplex his readers.

Treatment of the magnates

But we wrong the man if we wish to make him the representative of a class. He stands, for the sake of art or of mystery, outside all classes, and is not going to tell us whether he is hallowed or lay, gentle or simple, free or bond, from town or from country. If one of his 'motives' would suggest one inference about such matters, he will be careful to suggest another inference by another motive. His political scheme of a parliament of earls and his attacks on royal officers might induce us to call him a member of an oligarchic and feudal party. But he has assaulted the dearest interests of that party with an energy that a law officer of the Crown might envy. In the first half of Edward I.'s reign one of the most flagrant disputes between the king and any class of his subjects was that which related to the 'franchises' of the magnates. The royal doctrine was that franchises could not be claimed by prescription, while many of the prelates and barons could show no other title for those jurisdictional privileges which they exercised. In the end the king had to give way. In 1290 he conceded that a seisin continued from the reign of Richard I. might be pleaded in reply to a *quo waranto*. Now, about this warmly controverted matter, we may find in the *Mirror* a doctrine which an attorney-general could have subscribed. To the full it sanctions the extremest claims that had been put forward in the name of kingly prerogative. The man who attempts to prescribe for a

[1] Below, p. 164 (Abuse 81); p. 179 (c. 29); p. 199.

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franchise does but aggravate his offence by asserting that he is an old offender.[1] Shall we say, then, that our author is a royalist pamphleteer? Far from it. Let the nobles wait; their turn will come, for 'it is an abuse that a tenant can without punishment enfeoff a third person in the fee of his lord to his lord's prejudice.'[2] This is a handsome concession to the great folk at a time when *Quia emptores* is imminent; and, though the franchises are attacked, the seignorial jurisdiction of the court baron which is exercised by the suitors as 'judges ordinary' is warmly defended against the new-fangled writs which encroach upon its domain.[3]

The author's disinterestedness

Is not this man a little too disinterested? Have we not a little too much difficulty in assigning the class to which he belongs? Have we not here the disinterestedness of the smart young man who is amusing himself and laughing in his sleeve? Having told us how Nolling was indicted for a sacrifice to Mahomet, he may be allowed the licence of the artist. The man who about the year 1289 says that there can be no prescription for franchises, and yet that the lord's consent is necessary if a tenant wishes to make a feoffment, is giving his opinion on two burning questions. One he decides against the nobles, the other in their favour. In each case his opinion is that which the statute roll is going to reject. Such a man is a representative, not of the spirit of the age, but of a disinterested spirit, the spirit of contradiction.[4]

Treatment of the villains

Of late years the passages in the *Mirror* which have attracted most attention are those which speak of villainage. The author warmly protests that according to law villains and serfs are not all one, that the villains are free men and are or ought to be protected in their holdings by the assize of novel disseisin.[5] This no doubt is worthy of remark,

[1] Below, pp. 113, 147.

[2] Abuse 151 (p. 175); p. 181 (c. 32).

[3] Below, p. 179 (c. 24); p. 182; p. 191 (c. 7).

[4] The Statute *Quia Emptores* and the Statute of *Quo Waranto* both come from the year 1290, and from what seems to have been considered one and the same parliament. See Statutes, i. 106–7.

[5] Below, pp. 79, 81, 162, 165, 177, 194.

and it may fairly be used, as it has been used, by way of argument to prove that the legal theory of villainage which we find, not merely in the text-books, but in the records of the king's court, ran counter to older doctrines which would have kept the *servi* and the *villani* apart from each other.[1] At the same time we must observe that the author's heresy about villainage is closely connected with other heresies which can hardly have any traditional basis. If it is an 'abuse' to deny the assize of novel disseisin to the tenant in villainage, it is also an 'abuse' to deny the same assize to the ejected tenant for term of years, and it is also an 'abuse' to hold that this assize does not protect the seisin of advowsons.[2] The plea in favour of the villains loses some, though not all, of its force when we find it mixed up with these crotchets.

Reactionary motives

Our author would not be angry, he would be pleased, if we called him a 'reactionary' or a 'retrogressist.' Like most of his contemporaries he believes rather in the good old time than in the good time coming, and it is his cue to restore to pristine purity those 'usages' of 'our holy predecessors' which have been 'turned to abuse.' But his list of abuses is a strange medley. As to a few of them we may say with some certainty that if King Edward's justices and officers were guilty of the practices that are denounced, they were knowingly breaking the law. That in and about 1289 there were in high place men who were quite capable of knowingly breaking the law we may learn but too easily from sources incomparably more trustworthy than the *Mirror*. But then these few 'abuses' are mixed up with many other 'abuses' which really are the newer developments of the common law. The man who calls them 'abuses' wants (or makes believe that he wants) to see the stream of law flowing backwards. Of any really remote time, even of the twelfth century, he does not know enough to enable him to demand the revival of many archaisms. But Bracton's book and living tradition teach him that

[1] Vinogradoff, *Villainage in England*, pp. 415–421.
[2] Below, pp. 67, 68, 162, 164, 194.

certain doctrines and practices are novelties. In a good many instances the 'abuse' would disappear if the law of 1200 or even of 1250 could be restored. Let us cite a few which seem to belong to this class.

4. It is an abuse that force may be used in disseisins after the third day of peaceable seisin.

9. It is an abuse that there are so many forms of pleadable writs.

13. It is an abuse that treason is not more commonly attainted by appeals.

19. It is an abuse that justices drive a lawful man to put himself upon his country when he offers to defend himself by his body.

50. It is an abuse that men can alienate more than a quarter of their inheritances away from their heirs.

56. It is an abuse to make a man answer to the king's suit when he is not indicted or appealed.

85. It is an abuse to outlaw a man for a default when the original cause of the proceedings against him is not a felony.

117. It is an abuse that rape is a mortal sin.

124. It is an abuse that anyone should be bound to render an account of the profits of land whereof he is guardian by lawful title.

126. It is an abuse that there is no trial by battle in personal actions as there is in case of felony.

127. It is an abuse that proofs and purgations are not made by the miracle of God when no other proof can be had.

Abuses new and old.

Now in these and some other cases the rules or institutions that are struck at seem to be novelties, and if by an 'abuse' the author merely meant that they were novelties to which he objected, he was free to use that word. And of course it is still open to question in our own day whether some of these innovations were wisely made: whether, for example, a little more courage might not have avoided the multiplication of new writs; whether there was any need for the criminal information which is neither appeal nor indictment; whether outlawry should not have been con-

fined to cases of felony; and so forth. Our author's voice is (we are happy to say it) the one and only English voice that we have heard pleading for a restoration of 'the miracle of God.' Still he is here pleading for the old against the new, and the so-called 'abuse' is more or less of a novelty; some yet living men may in their earliest childhood have seen an ordeal. If in these last years of the nineteenth century a man said, 'It is an abuse that fines and recoveries are not permitted; it is an abuse that the *peine forte et dure* is not inflicted; it is an abuse that *choses in action* are assignable,' we might call him a lunatic, but still should have to credit him with some knowledge of legal history. However, many of the Speculator's 'abuses' are not even novelties. Let us take this for example:—'It is an abuse to suppose that terms of years and presentments to churches cannot be recovered by the assize of novel disseisin.'[1] Now, without daring to say that never in any single instance had a term of years or the presentment of a church been recovered by this assize (accidents will happen even in courts of justice), we can, now that we have in print many excerpts from the oldest plea rolls, say with some confidence that the doctrine that is here reprobated as an abuse is as old as the novel disseisin itself. But, further, the practice on which the lash of 'reprehension' falls is sometimes no novelty; it is an almost obsolete archaism that is lurking, if anywhere, in the local courts. Thus: 'It is an abuse to allow voucher to warranty in larceny or in any other personal action.'[2] If this voucher in the 'action of theft' is being allowed in Edward I.'s day, we have here no new-fangled rule, but one of the most ancient traits of primitive Germanic law. In truth, no serious attempt is being made to separate the old from the new, and to restore the law of a past time. This manufacturer of 'abuses' knew so little of any history that such an attempt, had he made it, would not have prospered in his hands. But he is not making it. He is enjoying himself.

[1] Abuse 76 (p. 164). [2] Abuse 106 (p. 166).

Pedantry of the *Mirror*

When we have to deal with some anonymous and impersonal book we gladly catch at any sentence which seems to reveal by chance some little of the author's life, and sometimes, perhaps, we rear too lofty an edifice of conjectural biography upon a very slight foundation. In the present case we are scarcely tempted to any such constructive feat. The indications are too many and too contradictory. And so we are not going to say that this book comes from one of the oppressed villains, or from one who has lain in prison for debt, or from one whose favourite crime was rape. But perhaps we shall say that it comes from one whose opinions, or professed opinions, are the sport of small philological or biblical pedantries; who would oblige a lord to find maintenance for every serf, since *servi* are derived *a servando*;[1] who holds that imprisonment should never be inflicted except as a punishment for false imprisonment, because the Mosaic law demands strict retaliation;[2] who prides himself on knowing that the crime that in English law is called rape (Lat. *rapum*) is not exactly the *raptus* of the Canon law.[3] His book is an impersonal book, not because it is scientific, nor because he is modest, but because he is fantastic and irresponsible.

The attack on the judges

Howbeit, the strain that dominates the whole book is the dislike of the king's officers and their ways. Corrupt are they and become abominable in their doings; there is none that doeth good, no not one. From the chancellor and the false judges downwards, they are all guilty of offences, which, to give them their plain names, are perjury, larceny, and murder. If King Alfred came back among us he would hang such folk by the score. The system of government is as bad as those who administer it. What our author seems to detest most is any rule that puts the king or any of his subordinates outside the ordinary course of common justice. Writs should run against the king himself. The punishments that have been denounced of late against official oppressions are

[1] Below, p. 78; Abuse 89 (p. 165). [2] Below, p. 184.
[3] Below, pp. 28-29.

inadequate; those who are guilty of them are simply perjurers and larceners, and should be treated as such. May we not guess that here, if anywhere, our author is really in earnest, and that a good deal of the rest of his book is but a cloud in which he wraps up his dangerous opinions—opinions, I mean, that may bring him into danger? The man who wants to revive the ordeal, the man who holds that the emperor's consent is necessary if rape is to be made a capital crime, can always laugh at you if you take his words literally. May we not dream and tell our dreams?

The scandal of 1289

The dream that the king of old time could be sued in his own court is a dream that is becoming popular. It is becoming an article of faith among those who have complaints against the king for the time being. Here, more definitely than anywhere else, we can connect the *Mirror* with a political programme that many will accept.[1] Again, if we suppose that the book was written about the year 1289, the talk of 'false judges,' the hints that the chancery and the exchequer are full of perjurers and thieves, are not without point and truth. It was the time of the great scandal, the time of Solomon of Rochester and Thomas Weyland, the time of Adam of Stratton, the time when Edward appointed commissioners to try his judges, and even a Hengham hardly escaped with untarnished fame.[2] Even here, however, our friend is not going to speak out in simple and straightforward words. He will imply and he will allude. He will not talk of Stratton and Weyland; he will talk of Billing and Watling. He will mix up real grievances with fables and falsehoods and views and visions. He will carp at Edward's reforming statutes,

[1] Pollock and Maitland, *Hist. Engl. Law*, i. 500.

[2] The Records relating to this scandal deserve to be printed. It is mentioned by many chroniclers. See *French Chronicle of London* (Camd. Soc.), p. 22; *Continuator of Florence of Worcester* (Eng. Hist. Soc.), ii. 240; *Rishanger* (Rolls Ser.), 118; *Ann. Waverley*, 408; *Ann. Dunstable*, 355; *Thomas Wykes*, 319; *Ann. Worcester*, 499; *Barth. Cotton*, p. 171; *Nic. Trivet* (Eng. Hist. Soc.), 316. See also *Parliamentary Writs* (ed. Palgrave), vol. i. Chron. Abstr. 14; Stubbs, *Const. Hist.* ii. 120.

urging now some pedantic trifle and now some flighty fancy. It is the oddest jumble. At one moment we seem to hear the voice of Bentham, when codification is demanded,[1] and at the next moment we are back among inalienable fiefs. All is wrong; yes, all.

Summary

What, then, shall we say of this book? and what shall we call its author? Is he lawyer, antiquary, preacher, agitator, pedant, faddist, lunatic, romancer, liar? A little of all, perhaps, but the romancer seems to predominate. He would like that some of his tales should be believed. He hopes, as other romancers have hoped, to edify as well as to amuse his readers. But he is careful not to tell us when he is in earnest and when he is at play. So to do would not merely be an inartistic blunder: it might end in his being taken but too seriously. He is making an attack on powerful persons, on the king's justices and officers. He is hinting that the royal court is a den of thieves. It is well for him that, if called to account for his words, he can say that he was but telling stories of Alfred and Arthur, and ask you whether you cannot see a joke. That is what makes his work so puzzling to us nowadays. We guess that he wanted his readers to believe some things that he said. We can hardly suppose him hoping that they would believe all. We feel sure that in Paradise, or wherever else he may be, he was pleasantly surprised when Coke repeated his fictions as gospel truth, and erudite men spoke of him in the same breath with Glanvill and Bracton. And yet we cannot say with any certainty when he intends to deceive, when to instruct, when to divert. That is just what he wished. He has puzzled us, and will puzzle us until we know much more than we know as yet of the times in which he lived. It is a variegated, tessellated book, this book of his: *Dichtung und Wahrheit*—or shall we adopt Ihering's *Scherz und Ernst in der Jurisprudenz*? But why borrow from Germany? Perhaps (but even of this we

[1] Abuse 3 (p. 156): 'It is an abuse that the laws and usages of the realm, with the reasons for them (*lur enchesons*), are not put in writing, so that they might be known to all.

cannot be sure) we have his own description of his own work: it is Ivory and Horn.

A theory of the book

To elaborate a theory as to the origin of such a book would be hazardous; but we have seen how two lines of investigation seem to converge. In order to discover the date of its composition we ask what statutes are, and what are not, noticed in it, and we are thus led to the years between 1285 and 1290. Then we see that its main and ever-recurring theme is a denunciation of 'false judges,' and we call to mind the shameful events of 1289. The truth was bad enough; no doubt it was made far worse by suspicions and rumours. Wherever Englishmen met they were talking of 'false judges' and the punishment that awaited them. All confidence in the official oracles of the law had vanished. Any man's word about the law might be believed if he spoke in the tones of a prophet or apostle. Was not there an opening here for a fanciful young man ambitious of literary fame? Was not this an occasion for a squib, a skit, a 'topical' medley, a 'variety entertainment,' blended of truth and falsehood, in which Bracton's staid jurisprudence should be mingled with freaks and crotchets and myths and marvels, and decorated with queer tags of out-of-the-way learning picked up in the consistories? While the 'false judges' were being soundly lashed, and the gallows was being erected within their view, many other classes of men, especially those which were privileged, could be made to feel uncomfortable by attacks on their interests and their cherished beliefs. Then over the whole a solemn veil of religiosity could be thrown, and startled readers might be assured that all that was written in this book was sanctioned by holy writ and 'the usages of our holy predecessors.' This, no doubt, is guess-work. It is very possible that some reader more learned or more acute than the writer of these lines will discover some serious purpose, some practical scheme of reform, running through the *Mirror*; I have looked for it and have not found it.

And what of Master Andrew, the Chamberlain? Did

Arguments for Horn's authorship

he write this book? Let us sum up the evidence which points to him as its author. In the first place, we have those five verses. They are obscure enough; but one plausible interpretation of them is, that by contrasting Ivory and Horn they half reveal, while they half conceal, the author's name. In the second place, we trace the only known copy of the book into Andrew's possession, and have reason to believe that this copy was made for him and under his eye. Thirdly, we find in his possession another book, a law-book stuffed with fables, which may well have suggested the compilation of the yet more fabulous *Mirror*. Fourthly, we learn that he regarded these two books as forming part of a grand collection of materials which were to serve as a *Corpus Iuris Anglicani*. Lastly, we may attribute to Horn, as well as to the composer of the *Mirror*, a tendency to trifle with Canon law; also a tendency to speak of English law as Saxon, and to listen to what Germans tell of Germany, the old home of the Saxons.

Arguments against Horn's authorship

On the other hand, we have some scruple in attributing this fantasia to the patient archivist of the Gildhall, who filled volume after volume with trusty transcripts of genuine documents, or to the chronicler who left behind him those creditable London Annals. The Statute of Westminster the Second, which in the *Mirror* becomes a target for cavil and reprobation, was for the civic Chamberlain *peroptimum statutum*. That some thirty or forty years after the book was written an honest antiquary should treat it as sound historical material would not surprise us. In the middle ages the clumsiest forgers deceived the gravest critics, and we have seen how Horn treasured and annotated a copy of another law-book which, though much less mythical than the *Mirror*, contained many a purposeful falsehood. Again, Horn did not die until 1328, while the *Mirror* looks as if it had been written about forty years earlier. But perhaps it is here that lies the solution of the difficulty. We may have before us the work of a young man who grew wiser as he grew older. In the *Mirror* he sowed his wild oats. He began, as clever youths often will, with the romance of law,

with a very 'general jurisprudence,' with history written *a priori*, with a full persuasion that he is wiser than the judges and that those who differ from him live in 'mortal sin.' He lived, as perhaps even a clever youth sometimes will, to love the document and collect materials for the Selden Society. In that case, however, we shall have to add that to the end of his life he kept his early work by him, thought no great evil of it, and proposed to include it in his collection of legal treatises along with the prosaic Britton. But we are none of us severe enough judges of what we wrote while the ivory gate stood open.

The verdict

Were we sitting as a jury to try Horn for the publication of this book, we should have to give him the benefit of the doubt, though we could hardly say that he 'left the court without a stain upon his character.' However, we need be in no hurry to decide the question. A good deal about Horn has been discovered in recent years, and probably much more will be discovered. He was an important man in the City. A few more facts might turn the scale one way or another. For example, could we see him imprisoned, we might begin to believe that the *Mirror* was written in gaol. At present there is evidence against him, but it is by no means conclusive. We should almost certainly acquit him were it not for those verses; and on them we must not lay much stress, for we cannot be sure that they have come to us in their original shape, and it may be within our memories that in days not long gone by, when 'verses' were 'compulsory,' a promising dactyl such as *ēbŏrĕ* seemed to certain schoolboys too providential to be meaningless.

Failure of the *Mirror*

Once more let it be repeated that, if this book was meant to be read and copied, it was a miserable failure. Our libraries teem with Glanvills and Bractons, with Brittons and Henghams, with *Fet a saver* and *Cadit assisa*. The copy of the *Mirror* that Horn gave to the Gildhall remained, so far as we know, a unique copy until it was unearthed by a generation which had forgotten the thirteenth century and was greedy of old tales. No doubt a

well-read and circumspect historian may find valuable hints in this book; but the statements of law that are in it he will often construe by 'the rule of contrary,' and he will insert a 'not' whenever the author is more than usually positive. If ever we are tempted to accept any statement made in the *Mirror* and not elsewhere warranted, we shall do well to ask ourselves whether we believe that an Englishman called Nolling was indicted for a sacrifice to Mahomet, and to speculate as to what may happen if six centuries hence *The Comic Blackstone* is mistaken for the work of the great commentator.

Defects of the manuscript

If the book was composed so early as 1290 or thereabouts, the existing MS. cannot be the original. But I do not think that in any case it can be the first MS. that was written. It is full of mistakes. Some of these look to me like the mistakes of a clerk who is writing from dictation: they are mistakes committed by the ear; but others seem to be mistakes of the eye.[1] If we suppose Horn to be its author, we may perhaps think of him as getting this MS. made near the end of his life from an older and, it may have been, a very rough copy.

This edition

Mr. Whittaker's endeavour has been to put before the Society an exact transcript of this MS., the letters that in the MS. are *in compendio* being here represented by italic letters; but the capricious punctuation of the MS. has not been preserved. In one respect he has departed from the original. The original is divided into four books. The printed text of 1642 is divided into five chapters, the third book of the MS. having been divided into two chapters in the printed text. As a good many of our law-books contain references to the *Mirror*, it has seemed well that we should at this point preserve the arrangement made in 1642. Our third and fourth books, therefore, represent the third book of the MS.; our fifth book is its fourth.

[1] In particular he has a curious trick of writing *r* instead of *i* at the beginning of a word. On many occasions he has written *requis* instead of *ieques* (mod. Fr. *jusque*). When, as frequently happens, *ces* is put for *ses*, this looks like a mistake of the ear; but we often find *ces* for *ceo*, and this is a mistake of the eye.

Corruption of the text

The text is so corrupt that a good editor of the *Mirror* ought to have that perfect and scientific knowledge of medieval French which would enable him to suggest numerous emendations. In particular he ought to know what medieval French would sound like when spoken by a medieval Englishman and listened to by a sleepy clerk. Any such knowledge we cannot pretend to have, but Mr. Whittaker may, I think, claim that his text is at all events far better than that which has hitherto been current. The editor of 1642 made many blunders and allowed himself a marvellous licence. One specimen may be enough :—

MS. *par* quoi q*e* ne fet mie a crere mesdisaunz ne a la veine voiz del poeple.

1642. per quoy que ne fit my tryer misdemeanors ne al a vicine del people.[1]

Perhaps the oddest mistake is one which speaks of the crimes 'de heresie et de Romery.' Well, 'Romery' might be an offence and a sort of heresy in 1642, but hardly in the days of Andrew Horn or King Alfred. The MS. has *reneire*—that is, renegation. It is not very seemly, however, for us to be pointing out errors when we are but too conscious that we have not done all that philological skill and legal learning might have done for the restoration of our text. In translating it an attempt has been made to make the translation of bad passages serve as a comment upon them : in other words, conjectural amendments are thrown into the translation instead of being thrown into footnotes. A few passages we have been compelled to leave untranslated.

Last words

We owe our best thanks to the Master and Fellows of Corpus Christi College for allowing us to transcribe the MS., and to two successive librarians of the College, namely, the late Mr. S. S. Lewis and the Rev. J. R. Harmer (now Bishop of Adelaide), for many courtesies; our debts to Dr. Verrall of Cambridge, and Dr. Liebermann of Berlin, we have already acknowledged. Mr. H. S. Milman has

[1] Ed. 1642, p. 141; below, p. 59.

been kind enough to allow us to see some valuable notes on the authorship of the *Mirror* that he wrote a few years ago. We could wish that the book had fallen into the hands of an editor who would have solved all its riddles.

F. W. M.

April 18, 1895.

Postscript.—Whether our author intended his book to be a Mirror of Justices or a Mirror for Justices is not very certain. Near the beginning we find 'Mireur a Justices' (p. 3), while in the *Explicit* we find 'Mireour des Justices.' The Latin *Incipit* gives us 'Speculum Iusticiariorum.'

It has been pointed out to me that there may be in those mysterious verses a pun that I had not detected. We have the words *apprenticiis ad barros* immediately followed by the word *ebore*. I do not think that the word *barros* (which, though rubbed, is fairly legible) need surprise us, for a masculine *barrus* seems to have been in use as well as the more common *barra*. Again, the plural of the word seems to have been sometimes used to describe what we should call the *bar* of a court. Besides, the versifier may be speaking of the apprentices at the *bars* of the various courts. But, if an undesigned, it is a curious coincidence that he has brought into close contact with ivory (*ebur*) a word (*barros*) which may mean elephants. This word (*barrus*) occurs in Horace, *Epod.* 12. 1, and, though a very rare word, seems to have made its way into medieval glossaries. If we suppose that there is a pun, then, as our Secretary, Mr. B. F. Lock, suggests to me, the apprentices to the bars are also apprentices to the elephants and receive a gift 'graced with tusks' (*ebore gratum*). This book, we may say, conveys to the apprentices a present grateful as tusks to young elephants (for it will enable them to fight), while it provides solid food for older lawyers. He also suggests that *gratum* may be a mistake for *gratius*. This, if we assume that *iuridicis* was pronounced with an initial

vowel sound, might 'scan,' while it would make grammar and sense without the pun, and yet would not interfere with the pun, if pun there be: 'a gift to the law students 'more precious than ivory (to elephants).' Either of these suggestions might enable us to say that the first four lines can dispense with the fifth, and that the juxtaposition of ivory and Horn is accidental. Whether *barrus* (elephant) was a word with which our author was likely to be acquainted is a question that I must leave to others. The supposition that the copyist of the manuscript wrote *ebore* when he ought to have written something else will not be ignored by those who know him.

ERRATA.

P. 48, line 10: *le denger* should be *ledenger*, meaning to abuse, to insult. See the next correction.

P. 107. This passage about Leuthfred's statute appears again on p. 152, in a correcter form. Instead of *des suz estuz et mis* we should read *desvestuz et nus*. Translate as follows: 'who ordained that one might defend [= deny] opprobrious words [= charges of having used opprobrious words] and naked and devested contracts by one's law [= by compurgation].' The word *ledenge* means insulting, opprobrious. See Ducange, *Gloss. franç.* s. v. *ledangier*, *ledenge*; La Curne de Sainte-Palaye, s. e. v.; Diez, s. v. *laido*. It is connected with Mod. Fr. *laid*; Littré, s. v. *laid*.

LE MIREUR A JUSTICES

THE MIRROR FOR JUSTICES

ISTE LIBER VOCATUR SPECULUM JUSTITIARIORUM.

Hanc legum summam si quis vult iura tueri
Perlegat et sapiens si vult orator haberi.
Hoc apprenticiis ad barros ebore munus
Gratum juridicis[1] utile mittit opus.
Horn mihi cognomen Andreas est mihi nomen.

Cum jeo maperceyvoie devers de[2] qe la lei deveroyent governer par rieules de droit, aver regard a lur demeine terriens proffiz, e as princes seignurages e amis plere, e a seignuries e avoir amassier, e nient assentir qe les dreiz usages fusent unqes mis en escrist, par unt poer ne lur fuse toleit, des uns par colour de jugement prendre, les autres exiler, ou enprisoner, ou desheriter, saunz peine emporter, coveranz lur pechie par les excepcions de errour e de ignoraunce, e nient ou poi pernaunte regard as almes de peccheours sauver de dampnacioun par leaux jugementz, solom ceo qe lur office demaunde, e eient usez en cea a juger la gent de lur testes par abusions e examples dautres erpanz en la lei plus qe par droites riules de seint escripture, en arrerissement grantment de vostre[3] aprise, qi edefiez sanz foundement e apernez a juger eins ces[4] qe vous vous conoissez en jurideccion qest pie de vostre aprise, e en lei de terre einz ceo qe en lei de persones, auxi com est de

[1] The word *juridicis*, which is not now legible, is supplied from a comparatively modern copy of the verses, which has been written on the first page of the MS.
[2] Supply *ceux*. [3] Or *nostre*. [4] Corr. *ceo*.

THE MIRROR OF JUSTICES.

Read me, whoe'er the substance of the laws
Desires to see, or plead with sage applause.
Here Ivory's grace attracts apprentice eyes,
While profit for the coif our book supplies.
Horn—Andrew Horn—the author is who writes
[Thus Horn with Ivory, Truth with Grace unites].

When I perceived that divers of those who should govern the law by rules of right had regard to their own earthly profit, and to the pleasing of princes and lords and friends, and to the amassing of lordships and goods, and would never assent that the right usages should be put in writing, whereby would be taken from them the power of arresting some by colour of judgment, and of exiling, imprisoning, or disheriting others, without suffering punishment therefor, and when I saw them cloaking their sin by the 'exceptions'[1] of error and ignorance, and having little or no regard to the salvation of the souls of sinners from damnation by lawful judgments, as their office demands, and having hitherto used to judge folk out of their own heads by abuses and precedents of others erring in the law, and not by the right rules of Holy Writ, to the great hindrance of your endeavour, all ye who build without foundation, and take on yourselves to judge before that ye are learned in jurisdiction, which is the very groundwork of your profession, and hold yourselves out as learned in the law of land before ye have mastered the law of

[1] We might say 'special pleas,' or simply excuses; but our author chooses to use a technical term.

ceux q*e* ap*er*nent arz avant les parz :—Je p*er*secutor de faus juges e p*ar* lur exsecucion fausement enp*ri*sone, les p*ri*vileges le Roi e les vieuz roulles de sa tresorie, dount amis me solacerent en mon soiour,[1] c*er*chai, e le foundement e la nessaunce des usages dEngleterre donez por lei, oveq*e* les gueredouns des bons jugez e la peyne des autres i trovai, e a plus bref q*e* jeo savoie la necessite mis en remenbraunce, a quoi compaign*on*s meiderent destudier el viel testament, el novel, el canon e en lei escr*ist*.

Tr*o*vames q*e* lei nest autre chose q*e* riules donees p*ar* no*s* seinz p*re*decessors en seinte escr*i*pture por sauver almes de dampnacion p*er*petuele, tut soit ele p*ar* faus juges defuscez. E trovames q*e* tote seinte escr*i*pture remeint el vieu testament e el novel. Le viel contient treis ordres, lei, pr*o*phetes e agiograffes. En la[2] sont vj. volu*m*s pentateuc, Genesis, Exode, Leviticus, le livre de Numeri e le livre Deuteronomii. En lordre des pr*o*phetes sunt viij. volums, Josue, Judicum, Samuel qi est le pr*i*mer e le secunde des Rois, le quart Malachiel qi est des Rois e contient le tierz livre e le quart des Rois; le quint est Isaie; le sisime Ieremie; le setime Ezechiel; le utime le livre de xij.[3] pr*o*phetes. En lordre des agiograffes sunt ix. volu*m*s, Iob, le livre de Psaumes, les Pr*o*verbes de Salomon, dEcclesiastes, Cantica Canticor*um*, Daniel, Par*a*lipomenon, Esdras, e Hester. E estre ces[4] sunt autres livres el viel testament, tut ne soient il auctorizes el canon, sicom Thobie, Judith,

[1] Or *sorour*.
[2] Supply *lei*.
[3] Supply *petits* (?).
[4] Corr. *ceo*.

persons [1] (like to those who study the liberal arts before the parts of speech [2]): I, the prosecutor of false judges, and falsely imprisoned by their order, in my sojourn [in gaol] searched out the privileges [3] of the king and the old rolls of his treasury, wherewith my friends solaced me, and there discovered the foundation and the generation of the customs of England which are established as law, and the guerdons of good judges and the punishment of others, and as briefly as I could I set in remembrance what is essential, for which end my companions aided me in the study of the Old Testament and the New, and the canon and the written law.

And we discovered that law is nothing else than the rules laid down by our holy predecessors in Holy Writ for the salvation of souls from everlasting damnation, although it be obscured by false judges. And we found that all Holy Writ consists of the Old Testament and of the New. The Old contains three divisions—the law, the prophets, and the hagiographers. In the law there are the five [4] volumes of the Pentateuch: to wit, Genesis, Exodus, Leviticus, Numbers, and Deuteronomy. In the class of the prophets there are eight volumes: to wit, Joshua, Judges, Samuel (which is the First and Second of Kings); the fourth is Malachiel, concerning the kings, and contains the Third and Fourth Books of Kings; the fifth is Isaiah, the sixth Jeremiah, the seventh Ezechiel, the eighth is the book of the twelve minor prophets. In the class of hagiographers there are nine volumes: to wit, Job, Psalms, Proverbs of Solomon, Ecclesiastes, the Song of Songs, Daniel, the Chronicles, Esdras, and Esther. And besides there are other books in the Old Testament, albeit they are not in the canon, such as Tobit, Judith, Maccabees, and

[1] It appears from the last sentence of the book that our author regards his work as a treatise on 'the law of persons,' which is more elementary than the law of land.

[2] It is believed that this jingling contrast between *artes* and *partes* was not uncommon.

[3] Perhaps in the sense of *privilegia* granted by the king—charters of immunity and the like.

[4] As the text stands our author seems to make six volumes by adding the Pentateuch to its five component books.

Machabees e ceo qe lenz est de Salomon e dEcclesiastes. Le novel testament contient les evangelistres, les apostres e les seinz peres. Les evangellistes contienent iiij. volums. Le scripture des apostres contienent iiij.; les epistres Pol, les epistres del canon, le Apocalips e les Actes des Apostres. De lescripture des piers nen ad nul certein noumbre determine.

E de nous usages fiz concordaunce a lescripture. E en langage plus entendable en eide de vous e del comun del poeple e en vergoigne de faus juges compilai ceste petite summe de la lei des persones, des genz, en v. chapitres, ceste assaver, en pecchiez countre la seinte pees, accions, excepcions, jugemenz, abusions, qe jeo appellai Mireur a Justices, solum ceo qe jeo trovai les vertues e les substaunces embullees e puis le temps le Roi Arthur usez par seinz usages accordaunce [1] as riules avantdites. E vous pri qe les defautes voillez redrescier e aiouster solom ceo qe par verrei garraunt enporrez estre garantiz e procurer a reprendre e confondre les cotidienes abusions de la lei.

[1] Corr. *accordauntz*.

what is therein of Solomon and Ecclesiastes. The New Testament contains the Evangelists, the Apostles, and the Holy Fathers. The Evangelists contain four volumes; the writings of the Apostles contain four, the Epistles of Paul, the Canonical Epistles, the Apocalypse, and the Acts of the Apostles. Of the writings of the Holy Fathers there is no certain number determined.

And I made a concordance of our usages with the Scriptures. And in a language easy to be understood, and for your aid and that of the commonalty of the people, and to the shame of false judges, I compiled this little summary of the law of persons, or the law of the folk, in five chapters: to wit, (1) Of sins against the holy peace, (2) Of actions, (3) Of exceptions, (4) Of judgments, (5) Of abuses. And this summary I have called The Mirror for Justices, according as I found the virtues and the substances sanctioned by bulls and by holy usages which have obtained since the time of King Arthur in accordance with the rules aforesaid.[1] And I pray you to redress and adjust the defaults as best you may be warranted by good warrant, and to procure that the daily abuses of the law may be reproved and brought to naught.

[1] Apparently, *embullces* (Lat. *imbullatas*) must mean comprised in bulls or charters under seal, such as those *privileges* of the kings to which the author has recently referred. He is to give us the virtues and substances, that is, the force and substance of charters and usages.

[LIBER I. DE PECCHIEZ COUNTRE LA SEINTE PEES.][1]

De la nessaunce de la seinte lei.

De la venue des Engleis.

Des premiers constitutciouns.

De pecchie e de sa devisioun.

Del crime de mageste.

De fausonerie.

De traison.

De arson.

De homicide.

De larcin.

De hamsokne.

De rap.

Del office de corouner.

Del eschere.[2]

Des menues courtz.

Des cours de viscountes.

Des veuues de franc pleges.

[1] The MS. does not give this heading.

[2] Corr. *del eschequere.*

BOOK I. OF SINS AGAINST THE HOLY PEACE.

1. Of the generation of Holy Law.
2. Of the coming of the English.
3. Of the first constitutions.
4. Of sins and their classification.
5. Of the crime of laesa majestas.
6. Of forgery.
7. Of treason.
8. Of arson.
9. Of homicide.
10. Of larceny.
11. Of hamsoken.
12. Of rape.
13. Of the office of the coroner.
14. Of the exchequer.
15. Of petty courts.
16. Of the sheriff's courts.
17. Of views of frankpledge.

LIBER I.

DE PECCHES CONTRE LA SEINTE PEES.

[*Ch. I. De la nessaunce de la seinte ley.*] [1]

Dieu tut pussant moustra plus de affeccion a creature humeyne qe a autre q*uan*t il la fist a sa semblaunce e la [2] dona discrecion, regardant qele estoit continuelement aticee a pecchie p*ar* iij. manere de adv*er*saries, e la [2] dona lei pur chacier peccheours a sauvacion p*ar* t*er*riens peynes, qi de p*ur*e amour dever Dieu ne voillent cesser de pecchier e en fist Moysen doctour qi lu tient ore lapostoille.

Cele lei p*ar* lordeinement de nos seinz p*re*decessors est p*ar*tie en deux volu*m*s, el canon q*e* se conoist en amendemenz de pecchiez espiritieus p*ar* amonicions, p*ri*ers, repr*is*es, e escomengez : en lei escr*is*te q*e* se conoist en corrections des pecchiez mat*er*ieus par somo*n*ses, attachementz e peynes. Lespiritele guient les prelatz. Les autres guient les lais p*ri*nces ; e se eide lune p*ar* lautre.

La lei dunt ceste sum*m*e est fete est estrete des aunciens usages garantiz de seinte escr*ip*ture, e pur ceo qele est gen*er*alement donc a touz est ele apele comune. E por ceo q*e* nul autre lei est for cele, est ele une [3] dantiquite en concilx gen*er*alx ou p*ar*lemenz est suffert destre use p*ar* seins usages. E ceo div*er*sement par lus solom les div*er*se qualites de la gent de div*er*s regiouns e lus. E ces usages

[1] The titles of this and the following chapters are in some cases supplied by us from the preceding Table of Contents.

[2] Corr. *lui*.

[3] Some mistake may be suspected.

BOOK I.

OF SINS AGAINST THE HOLY PEACE.

[*Ch. I. Of the Generation of Holy Law.*]

Almighty God showed more affection for human than for any other beings, since He made them in His own image, and gave them discretion, considering that they were ever enticed to sin by three manner of adversaries, and He gave them the law to drive sinners to salvation by earthly pains, since for pure love of God they would not cease from sin; and He made Moses a doctor, whose place the Pope now holds.

This law, by the ordainment of our holy predecessors, is divided into two volumes: to wit, (1) the canon, which is conversant with the reformation of spiritual sins by admonitions, prayers, reprehensions, and excommunications; and (2) the written law, which is conversant with the correction of material sins by summonses, attachments, and punishments. The prelates guide the one, the spiritual law; the lay princes the other; and each aids the other.

The law of which this summary is made is extracted from ancient customs warranted by Holy Writ, and because it is given to all in common it is called common law. And for that there is no other law than this, it exists as one from of old,[1] and in general councils or parliaments it is suffered to be observed by way of holy usages. And these differ from place to place according to the different qualities of the folk of divers regions and places. And in certain

[1] Translation doubtful.

en plusours lus, citez e bourgs sunt changies par auncienes privileges al aisement del poeple de ceus lus.

Touz nos usages sunt ausi fondez por la sauvacion e la exaltacion de la seinte pees Dieu, car le seu[1] e li saver qe de Dieu vient nen est mie a juger la gent a la volee[2] par similitudes e examples nient canonizes, eins est amour de pees, de chastetie, dattemprure, damiable amonestement de merci e des bones oeuvres.

[*Ch. II. De la venue des Engleis.*][3]

Apres ceo qe Dieux avoit abatue la nobleie des Bretons qe plus userent force qe droit, livera il le reaume as plus humbles e simples de tuz pais joygnauntz, cest assaver a Saxnes, qe le vindrent conquere des parties d'Alemayne. De la quele gent ieurent jesqes a xl. soveins[4] qe touz sei tindrent a compaignouns. Ceus appellerent primes ceste terre Engelonde qe avant fu nomee Bretaigne le Majour.

Ceux apres grantz gueres, tribulacions e peynes par longe tens suffertz ellurent il de eus a[5] Roi pur regner sur eus e pur governer la poeple Dieu, meyntenir e defendre les persones e les biens en quiete par les riules de droit.

Al corounement le firent jurer qil meintendreit la seinte foi cristiene a tut son poer, e son poeple guieroit par droit saunz regard a nule persone, e serreit obeissant a seinte eglise e justisiable a suffrir droit com autre de son poeple. E pus est le reaume torne en heritage. Solom le nombre de compaignons qe remistrent estoit le reaume partie par pais e a chescun estoit j. pais livre a garder pur defendre de enemis solom chescuni estat, cest assavoir :—en

Norfouke	Hertford	Kant
Suffouk	Middlesex	Surreie
Essex	Londres	Sussexe

[1] Or *sen.*
[2] Corr. *volunte* (?).
[3] Supplied from the Table of Contents.
[4] Corr. *sovereins.*
[5] Corr. *un.*

places, cities and boroughs, these usages are varied by ancient privileges, to the easement of the folk of those places.

All our customs are also founded for the salvation and exaltation of the Holy Peace of God; and the knowledge and wisdom that comes from God is to judge the folk, not at will by analogies and precedents that are not canonised, but by love of peace and chastity and temperance, and by friendly admonition towards mercy and good works.

[*Ch. II. Of the Coming of the English.*]

After that God had abated the nobility of the Britons, who had recourse to force rather than to law, He delivered the kingdom to the humblest and simplest of all the neighbouring nations: to wit, the Saxons, who came to conquer it from the parts of Almaine. Of which folk there were as many as forty sovereigns, who all aided each other as fellows. They first called this land England, which theretofore was called Britannia Major. And they, after great wars and tribulations and pains long time suffered, chose from among themselves a king to reign over them and to govern the people of God and to maintain and defend their persons and goods by the rules of right.

And at his crowning they made him swear that he would maintain the Christian faith with all his power, and would guide his people by law without respect of any person, and would be obedient to holy Church, and would submit to justice and would suffer right like any other of his people. And after this the kingdom became heritable. And according to the number of the companions who remained the kingdom was divided into districts, and to each companion a district was delivered, to hold and defend against enemies, according to the estate of every of them: to wit—

Norfolk	Hertford	Kent
Suffolk	Middlesex	Surrey
Essex	London	Sussex

Suhampteschire	Cestreschire	Norhamptoneschire
Herefordschire	Derbischire	Oxenefordschire
Wilteschire	Notinghamschire	Wirecestreschire
Somerset	Leicestreschire	Warwickschire
Dorset	Lancastreschire	Roteland
Devonschire	Westmereland	Grantebiggeschire
Cornewaille	Cumberland	Huntingdonschire
Gloucestreschire	Norhumberland	Bokinghamischire
Salopsechire	Everwickschire	Bedefordschire
Staffordschire	Nichole	Barrocschire

E tut seit qe le Roi ne deit aver nul pier en sa terre, pur ceo neqedent qe le Roi de son tort sil pecche vers ascun de son poeple ne nul de ces commissaires ne poet estre juge e partie, convenist par droit qe li Roi ust compaignouns pur oir e terminer as parlementz trestuz les brefs e les pleintes de torz le Roi, de la Reyne, e de lur enfanz, e de lur especiaus, de qi torz len ne poet aver autrement comun dreit.

Ceus compaignons sunt ore appellez contes apres le latin de comites, e issi sont hui ceux pais appellez comtiez e en latin comitatus, e ceo qest dehors ces countiez as Engleis est de conquest puis cele tens.

Ceus compaignouns apres la partie del reaume en pais partirent lur genz e la gent qil troverent remise en centeines, e a chescun assignerent un centener, e solom le nombre de centeines partirent chescun pais e a chescun centener assignerent sa partie en certeines metes pur gardre e defendre ovesqes sa centeine, issi qil fusent aperesz a coure a armes a totes les foiz qe cri levast pur enemis ou qe mestier en fut. E celes parties sunt en alcuns lus appellez hundredes solonc la noumbre de cele primere gent; e en ascuns lus tridengs

Southamptonshire	Cheshire	Northamptonshire
Herefordshire	Derbyshire	Oxfordshire
Wiltshire	Nottinghamshire	Worcestershire
Somerset	Leicestershire	Warwickshire
Dorset	Lancashire	Rutland
Devonshire	Westmoreland	Cambridgeshire
Cornwall	Cumberland	Huntingdonshire
Gloucestershire	Northumberland	Buckinghamshire
Salopshire	Yorkshire	Bedfordshire
Staffordshire	Lincoln	Berkshire[1]

And albeit that the king should have no peer in his land, nevertheless in order that if the king should by his fault sin against any of his people, in which case [neither he] nor any of his commissioners could be judge, he being also party, it was agreed as law that the king should have companions to hear and determine in the parliaments all the writs and plaints concerning wrongs done by the king, the queen, their children, and their special ministers, for which wrongs one could not otherwise have obtained common right.

These companions are now called counts, from the Latin *comites*, and therefore these districts are now called counties, and in Latin *comitatus*, and whatever outside these counties belongs to the English has come by conquest since that time.

These companions after the partition of the kingdom into districts, partitioned their folk and the people that they found remaining into hundreds; and to each hundred they assigned a hundredor, and according to the number of the hundreds they divided each district, and they assigned to each hundredor his part by certain bounds, to hold and defend with his hundred, so that they should be ready to run to arms whenever the cry should be raised on account of enemies, and whenever there should be occasion. And these divisions are in some places called hundreds, after the numerical divisions of these first occupiers; and in

[1] Durham may be purposely omitted.

ou wapentacs apres les Engles qest prise darmes en Fraunceis. Tieles divisions se furent *par* quoi la pees Dieu, qest charite e verroie amor, fust meyntenue.

[*Ch. III. Des premiers constitucioun*s.][1]

Del Rei Aelfred

Pur lestat del reaume fist le Roi Alfred assembler ces contes e ordena *pur* usage p*er*petuele q*e* a ij. fois p*ar* an ou plus sovent pur mestier en tens de pees sassemblerent a Londres pur p*ar*lement*er* sur le guiement de poeple Dieu, coment genz se gardereient de peccher, vivereient en quiete e recevereient droit p*ar* c*er*teines usages e seinz jugemenz.

Par cele estatut se furent plusours ordinances p*ar* plusors Rois jeqes al tiens [2] dore, les queles ordenaunces sunt desusez p*ar* meins sages e p*ar* defaut q*e* eles ne sunt mie mises en escrit e pupplies en c*er*teine.

De amour entre gens

Une des ordenaunces estoit q*e* chescun amast soun Createur p*ar* esproeve des oevres solom les poinz de la foi Cristiene; e defendu fust tort e force e chescun pecchie.

De deodandes e des choses apurtenaunt au Rey

Assentu fu q*e* cestes choses fussent appendauns as Rois e al droit de la coroune:—sov*er*eine juresdiction, la sov*er*eine seignurie de tote la t*er*re jeqes el miluieu [3] fil de la meer environ la terre, koin, franchises, tresour auncienement mucie en terre,[4] weif, estrai, chatiex de felons e des futifs q*e* remeinent outre autri droit, countiez, honurs, hundrez, soknes, gaoles, forosz,[5] chief citez, chief porz de la meer, g*r*antz maneries.

Ces dreiz retindrent les p*ri*mers Rois, e del remenaunt de la terre fefferent les contes, baron*s*, chivalers, serjanz, e autres a tenir des Rois p*ar* s*er*vice p*ur*veu e ordeine al defens del reaume.

[1] Supplied from the Table of Contents.

[2] Corr. *tens*.

[3] Corr. *milieu* (?).

[4] Some word has been wantonly erased.

[5] Corr. *foresz*.

other places they are called trithings or wapentakes, an English word equivalent to the French *prise d'armes*. These divisions were made in order that the peace of God, which is charity and very love, might be maintained.

[*Ch. III. Of the original Constitutions.*]

Of King Alfred

For the good estate of his realm King Alfred caused his counts[1] to assemble, and ordained as a perpetual usage that twice a year or more often if need should be in time of peace, they should assemble at London to hold parliament touching the guidance of the people of God, how the folk should keep themselves from sin, and live in quiet and receive right according to fixed usages and holy judgments.

Under this statute divers ordinances were made by divers kings down to the present time, which ordinances are disused by those who are less wise and because they are not put in writing and published in definite terms.

Of love among folk

One of the ordinances was that everyone should love his Creator, giving proof thereof by his works according to the articles of the Christian faith. And tort and force and every sin were prohibited.[2]

Of deodands and things belonging to the King

It was assented that the following things should belong to the kings and to the right of the crown: to wit, sovereign jurisdiction, sovereign seignory over all the land as far as the mid-stream of the sea round the land, coin, franchises, treasure anciently hidden in the earth, waif, estray, chattels of felons and of fugitives which remain when rights of others are satisfied,[3] counties, honours, hundreds, sokens, gaols, forests, the chief cities, the chief ports of the sea, the great manors. These rights the first kings retained, and of the remnant of the land they enfeoffed the earls, barons, knights, serjeants and others, to hold of the kings by services provided and ordained for defence of the realm.

[1] We write *count* rather than *earl*, for our author is playing with etymology.

[2] It is just possible that the writer is referring to the opening sentences of Canute's laws or one of the other ancient codes.

[3] The felon's just debts ought to be paid.

Des articles par vels Rois ordenez

Ordenez furent coroners en chescun contie e viscountes a gardir les pays q*uant* les countes se demistrent des gardes e baillifs el lu des centeners. E q*e* viscountes e baillifs fussent [1] assembles de fieu tenauns de lur baillies as contiez e as hundrez, e q*e* lem usast equite, si q*e* chescun jugeast son proeine partier jugement [2] cum len voissist autre foiz receivre en cas semblables, jesqes a taunt q*e* les usages del reaume fusent mis en escrist e estabiiz en c*er*teine. E tut ne put lem f*ra*nc hom*me* enserver sanz son gre, com*me*nt [3] nequident estoit assentu q*e* touz f*ra*nc fieu tenaunz sassemblassent en countez, hundrez, e es contez [4] lur seignurs, sil ne seient p*ri*vileges ou exempsz de tieles sutes fere, e illoec jugeassent lur p*ro*eine. E q*e* dreit se hastast de xv jours en xv devant le Rei e ces com*mi*ssaries, e de mois en mois en contiez si la largesce des countez ne demaundunt plus de respit, e de iij simenies en iij se hastast droit en autres cours. E q*e* chescun f*ra*nc fieu tenaunt fust a teles siutes fere oblige, e chescun fieu tenaunt ust juresdiccion ordeneire, e q*e* de jour en jour se hastast droit dest*ra*nges pleintifs en feires e marchiez cum pe poudrous solom lei marchande.

Ordene furent torns des viscountes e veuues des f*ra*ncs pleges, e q*e* nul del age de xiiij ans ou de plus ne fust recettie el reaume outre xl jours forp*ri*s hum*me*s passanz al foer de pelerins e de messagers, sil ne fust p*ri*mes plevi de f*ra*nc hom*me* e jure au Roi p*ar* se*re*ment de feaute e pus resceu en disaine.

Ordene fust q*e* chescun pleintif ust b*re*f remedial a son visconte ou al seignur de feu en ceste forme :—Questus est

[1] Corr. *facent.*
[2] Corr. *par tieu jugement*
[3] Corr. *comunement.*
[4] Corr. *courtz.*

Of the articles ordained by the ancient kings

And coroners were ordained in every county, and sheriffs [*vicecomites*] to ward the districts when the earls [*comites*] demised themselves from their wardship; also bailiffs in the place of the hundredors. And it was ordained that sheriffs and bailiffs should cause the fee tenants of their bailiwicks to assemble in the county and hundred courts, and that equity should be administered, and that each should judge his neighbour as he would himself be judged in a like case at another time; and that this should be so until the usages of the realm should be put in writing and established in definite terms. And albeit one cannot bring a free man into servitude against his will, nevertheless it was generally assented that all free fee tenants should assemble themselves in the county and hundred courts and in the courts of their lords, if they were not specially privileged and exempted from making such suit, and that they should there judge their neighbours; and that right should be speeded before the king and his commissioners from fifteen days to fifteen, and in the county courts from month to month, unless the size of the counties should require a longer respite, and in other courts from three weeks to three weeks;[1] and that every free fee tenant should be bound to make such suit, and that every fee tenant should have ordinary jurisdiction; and that right should be speeded from day to day to foreign plaintiffs in fairs and markets as with dusty foot[2] according to the law merchant.

And turns of sheriffs and views of frankpledge were ordained, and that none of the age of fourteen years or upwards should be received in the kingdom beyond forty days, except men travelling in the guise of pilgrims or messengers, unless they were first pledged by freemen and sworn to the king by oath of fealty and afterwards received into a tithing.

It was ordained that every plaintiff should have a remedial writ to his sheriff or to the lord of the fee in the

[1] This gives the effect of the writ of 1229 printed in the Annals of Dunstable, p. 119.

[2] Alluding to the so-called pi-powder courts.

nobis C. quod D. etc. et ideo tibi vices nostras in hac parte committentes tibi precipimus quod causam illam audias et legitimo fine descidas.

Ordene fust qe chescun ust del chanceler le Roi bref remedial a sa pleinte saunz nule difficulte, e qe chescun ust le proces de la jornee de son plee souz le seal le juge ou de la partie.

Ordene fu qe coroners receussent apeals de felonies e rendissent les jugementz des utlagaries e feissent les veuuz [1] en cas apres dis, e qe les proschein villes presentassent as corouners es contiez les messaventures des charoines des genz e les nouns de trovours. E qe chescun pais presentast felonies, mescheaunces e autres articles presentables en heires pur pecchie, qe les Rois les vousissent a ceo fere somondre contre les venues des Reis ou des justices assignes a tuz plez. E pur les grantz damages qe li comun suffri par amerciemenz issanz des concelementz e des defautes de tieux presentementz en eirès, assentu fu qe tieux presentemenz se feissent en eires par coroners par tut le commun: e issi sunt coroners les baillifs al commun quant as custages, e jalemeins sunt il les ministres le Rey pur ceo qil funt a li serement. De personel trespas nequedent sunt les coroners soulement punisables saunz le damage de ceaux qe les elurent, si as dues amendes fere de lur trespas suffisent.

Ordene fu leschecker en manere qe sut, e les peynes peccunieles de contes e de barons en certein e aussi des tenaunz condes [2] e baronies entiers ou des membres, e qe

[1] Or *venuz*

[2] Corr. *contiez*(?).

form following:—C. hath complained to us that D. etc., and therefore we, committing this matter to thee in our stead, command thee that thou do hear the said cause and determine it in due form of law.

And it was ordained that everyone should have from the king's chancellor a remedial writ for his complaint without difficulty, and that everyone should have a copy of the process relating to his case [1] under the seal of the judge or of the other party.

It was ordained that coroners should receive appeals of felony and give judgments of outlawry, and that they cause views to be made in the cases mentioned below, and that the neighbouring townships should make presentment to the coroners in the county courts concerning the corpses of men slain by misadventure, and the names of the finders; and that every district should present felonies, mischances, and other articles presentable in the eyres as sin, so that the kings may for this purpose cause them to be summoned against the coming of the kings or of their justices assigned to hold all manner of pleas. And by reason of the great damage that the commonalty suffered by amercements issuing from concealments and defects in such presentments at the eyres, it was agreed that such presentments should be made in the eyres by the coroners on behalf of the whole commonalty; and thus coroners are the bailiffs of the commonalty so far as expense is concerned, but none the less are they ministers of the king, because they make oath to him. Nevertheless as regards personal trespasses the coroners alone are punishable without any loss falling on those who elected them, if they [the coroners] are sufficient for the due amends of their trespasses.

As to the exchequer it was ordained in manner hereafter mentioned, and the pecuniary punishments of earls and barons and of those who held whole counties or baronies or members thereof were determined, and their amercements

[1] Apparently a copy of the record of what has been done in the cause on each day on which it has come before the court.

ceus amerciemenz fussent affoerez par les barons del eschecqer, e qe len envoiast les estretes de lur amerciementz al escheqere ou qil fussent amerciez en la court le Rei.

Ordene fu qe nul nust juresdiccion apres pleinte de tort avant la pleinte termine, cest assavoir en mesme le plee, e de ceo vient la clause el brief de droit, et nisi feceris vicecomes faciat.

Ordene fu qe chescun de age de xiiij ans en sus sapprestast des mortieux peccheours occire en lur pecchies notoires, ou de les consuire de vile en vile a hu e cri, si lem ne les poet occire ne deprendre ; e de mettre les contumaz en exigendes e de les utlager ou banir en manere qe sust ; e qe nul ne fust utlaguie forqe por felonie mortele, ne nul part forqe el contie ou li pecchie se fist.

Ordene fu qe la curt le Rei fust overte a touz pleintifs par quei il usent sanz delai brefs remedials aussi sur le Rei ou sur la Reyne come sur autre del poeple de chescun injurie, forpris en vengeances de vie e de membre ou pleint tient leu sanz bref.

Ordene fu qe nul Rei de cete reaume ne puet changer sa moneye, ne empeirer, ne amender, ne autre moneie fere qe dargent sanz lassent de touz ces counties.

Ordene fu qe felonies satendissent par apeals, e qe apeles se terminassent ascune foiz par batailles, e qe les exigendes de contumaz durassent par iij contiez continues avant la utlagarie.

Ordene fu e comunement assentu qe touz fieu tenaunz fussent obeissantz aparer as somonses des seignurs des fieus, e si lem feit homme aillours somondre qe es fieus des auctours ou plus sovent qe de curt en court qil nestovereit

were to be affeered by the barons of the exchequer; and the estreats of their amercements were to be sent to the exchequer or they were to be amerced in the king's court.

It was ordained that none should have jurisdiction after a plaint of wrong has been made before the plaint is determined: that is to say, that none should have jurisdiction in the same plea. Hence the clause in the writ of right, *Et nisi fecerit Vicecomes faciat.*[1]

It was ordained that everyone of the age of fourteen and upwards should be ready to slay mortal sinners in their notorious crimes and to pursue them from vill to vill with hue and cry if they could not kill or catch them; and should put the contumacious in exigent or banish them in manner hereafter mentioned. Also that none should be outlawed save for mortal felony, or elsewhere than in the county where the sin was done.

And it was ordained that the king's court should be open to all plaintiffs so that they might have without delay remedial writs as well against the king and queen as against any other of the people, for every injury, save where there is to be vengeance of life or member, in which case procedure is by plaint without writ.

It was ordained that no king of this realm could change, impair, or amend his money, nor make money of anything save silver without the assent of all his earls.

It was ordained that felonies should be attainted [2] by appeals, and that appeals should in some cases be determined by battle, and that the exigents of those who were contumacious should endure through three successive county courts before the outlawry.

It was ordained and generally assented that all fee tenants should be obedient to appear at the summonses of the lords of the fees; and that if a man should be summoned elsewhere than in the fee of the author of the summons or more often than from court to court, he should not be

[1] Perhaps the point is that there is to be no appeal from one seignorial court to another; Bracton, f. 329 b.

[2] Translation doubtful.

mie obeir a tiels somonces si noun as custages des auctours de somonses.

Ordene fu qe feu de chivaler remist al einzne fiz par succession de heritage, e qe socage fieu fust partable par entre les masles enfanz. E qe nul ne puet aliener de son heritage forqe le quart saunz lassent de son heir. E qe nul ne puet aliener son purchaz de ces heirs si assignes ne fussent especefies es dons.

Ordene fu qe chescun puet douer sa femme al hus del moustier de renable dowere saunz lassent de son homme[1]; que femeles heirs ou veudues se mariassent saunz lassent de lur seignurs liges, par quei as seignurs nestovereit prendre les homages de lur enemis ou dautres descovenables persones, e ceo estoit defendu sur peine de la forfeture des fieus le quele qe lur parenz sei assentissent ou noun. E qe vedues perdissent lur doeires en cas ou eles se mariassent sanz lassent des garans de lur doeires, qe seles aussi fussent disherites ou perdissent lur doeires qe se lessasent refeter einz ces qe eles fussent maries; vedues nequident ne forfirent lur heritage par putage.

Item chapitre des aunciens usages

E qe le fiz einzne ne puet rien forfere en prejudice de son auncestre ne des heirs vivant le auncestre qi heir il est plus apparant.

Ordene fu qe les seignurs des fieus feissent somondre lur tenaunz par lagard de lur piers es cours des seignurs ou es countiez ou es hundrez a totes les foiz qil recenissent[2] ou dedissent a fere lur droiz services ou forfeissent vers lur seignur en fet ou en dit, e le revers, cest assavoir le seignurs vers les tenauntz e illoec saquitassent ou forfeissent lur ligeaunce oveqe les apurtenaunces par lagard des sutiers de tote lur tenaunce des seignurs, e les seignurs outraious e torcenous perdissent les fieus e les services, e les tenaunz se chevassent as sovereinz seignurs des fieus.

[1] Corr. *heir*.

[2] This word is probably wrong.

bound to obey such summonses except at the cost of their authors.

It was ordained that a knight's fee should come by inheritance to the eldest son, and that a socage fee should be partible among the male children, and that no one should be able to alienate more than a quarter of his inheritance without his heir's consent, or to alienate his purchase away from his heirs unless assigns were mentioned in the gift.

It was ordained that everyone should be able to endow his wife at the church door without the consent of his heir, and that female heirs or widows should [not] marry without the assent of their liege lords, so that lords might not be bound to take the homage of their enemies or of other unfit persons. And this was prohibited upon pain of the forfeiture of the fees, whether the consent of parents had been given or no. Also that widows should lose their dowers if they married without the consent of the warrantors of their dowers. Also they were to be disinherited and lose their dowers who allow themselves to be seduced before marriage; but widows should not lose their inheritance by unchastity.

And that the eldest son can forfeit nothing to the prejudice of his ancestor or his heirs in the lifetime of the ancestor whose heir apparent he is.

It was ordained that the lords of fees should cause their tenants to be summoned by the award of their peers in the courts of their lords or in the county or hundred courts so often as they should deny or refuse to perform their right services or commit a forfeiture as against their lords by deed or by word; and conversely in case the lords should commit a forfeiture as against their tenants; and that then they should be acquitted or should forfeit their liegeance with the appurtenances by the award of the suitors touching all they held of their lords; and that outrageous and tortious lords should lose the fees and the services, and that the tenants should achieve [1] themselves to the superior lords of the fees.

[1] The tenant paravail achieves to the lord paramount: that is, acknowledges him as his immediate lord or head (Lat. *accapitare*).

Defendu est qe nul destresce se feist par les biens moębles des gentz mes qe par les cors ou par les fieus forpris cas especiaus apres diz ; e qe nul ne veast a autre renable destresce ne alescer naam mort pur gage ne vif naam pur plegges ou pur gage suffisaunt.

Ordene fu qe enfanz demorassent en garde ovesqe lur chatieus e lur heritages, e qe lur gardeins respondissent de trespas des enfanz e feissent satisfaccion as blesciez forpris des felonies ; e qe les mariages fussent as liges seignurs ; e qe escuages, relefs e aides se feissent des tenaunz as seignurages de lur heritages relever, des heirs car[1] seignurs fere chivalers e de lur einz nesces filles marier. E qe les heirs mascles feissent homage a lur seignurs, e les femeles lur jurassent feautie. E qe heritages descendissent a touz enfanz par garant del droit de possession e qe li mascle forcloreit la femele e li proschein le remue par garant del droit de propriete.

Ordene fu qe peccheours mortiels ne fussent mie suffertz a demorer entre innocenz. E qe le Rei ust lestrep des tenemenz as felons ou la value des terres e des rentes a un an. E qil ust les deodandes, e qe les chastieux des usuriez fussent au Roi, e qe les heritages des usuriers remeissent eschaetes as seignurs des fieuz.

Ordene furent essoines en mixtes actions e reales e ne mie en personeles solom ceo qe apres est dit.

Defendu fu qe nul alienast hors del reaume nules issues des terres ne de rentes.

Defendu fu qe nul argent ne fust porte hors del reaume.

Defendu fu qe nul ne vendist vin el reaume forqe par tonel ou pipe.

[1] Corr. *lur*.

It was forbidden that any distress should be made by men's movable goods; it was to be made by their bodies or their fees save in certain special cases mentioned below. And it was forbidden that any should deny to another reasonable distress or withhold any dead naam on tender of gage, or any live naam on tender of pledges or sufficient gage.

It was ordained that children should remain in ward with their chattels and their inheritances and that their guardians should answer for their trespasses, and make satisfaction to the injured save in cases of felony; and that their marriages should belong to their liege lords; and that scutages, reliefs and aids should be given by the tenants to the lords for relieving inheritances, for the knighting of the heirs of their lords and for the marrying of their eldest daughters; and that heirs male should do homage to their lords, and that heirs female should swear fealty; and that inheritances should descend to all the children under warrant of the right of possession, and that the male should exclude the female and the nearer the more remote by warrant of the right of property.[1]

It was ordained that mortal sinners should not be suffered to dwell among the innocent; also that the king should have the right to waste the tenements of felons, or to take the value of their lands or rents for one year; and that he should have the deodands; and that the chattels of usurers should belong to the king and that the inheritances of usurers should remain as escheats to the lords of the fees.

And essoins were ordained in mixed and real but not in personal actions, as will be said hereafter.

It was forbidden that anyone should alienate outside the realm the issues of any lands or rents.

It was forbidden that money should be carried out of the realm.

It was forbidden that wine should be sold in the realm save by the tun or pipe.

[1] Bracton, f. 64, holds that all the dead man's sons are *pares in jure possessionis*, though the firstborn is preferred *quoad jus proprietatis*.

Defendu fu qe nul ne menast leyne hors del reaume ne tuast aignel ne veel qe pust vivre ne berbis ne chastris.

Defendu fu qe nul evesqe ordenast lai homme al ordre de clers outre le noumbre de taunz qe necessaire fussent des eglises servir, par que la juresdiccion le Rei fust descru ou amenusee.

Ordene fu qe povres fusent sustenuz par les persones, rectours des eglises e par les parosiens, si qe nul ne morust par defaute de sustenaunce.

Ordene fu qe feires e marchez se fussent par lus, e qe achatours de ble e de bestes donassent tolun as baillifs des seignurs des marchiez ou des feires, cestassaver, maille de x soudes de bien; e de meins meins, e de plus plus, al afferaunt; issi qe nul tolun passast un dener de une manere de marchaundize. E cel tolun fu trove pur testmoignir le contract, car chescun privie contract fu defendu.

Ordene fu qe nuli action fust recevable en jugement, sil nen ust proeve present des tesmoins ou dautre chose, ne nul nestovereit a respondre a bref en venial accion en la court le Rei devant juge commissaire, einz ceo qe lactour trovast seurte des damages e despenses restorez, sil cheist en sa pleinte; forpris de reconusaunces de iiij petites assises, certificacions, atteintes, redeseisines, e autres cas qe sunt aussi qe del office le Rei; a la quele ordenaunce le Roi H. le primer mist cele mitigacion en favour de povres pleintifs, qe ceux navereient suffisance seurte presente fiansassent la satisfaccion a lur poer, solom renable taxacion. E en somonses en meme la manere. En haenge de perjurie furent atteintes ordenes en totes accions.

Defendu fu qe nul marchaunt aliene ne hantast engleterre forqe as iiij feires ne qe nul demorast en la terre outre xl jours.

Garantie fu de la corteisie le Roi Henry le primer qe tuz

It was forbidden that any should sell wool out of the realm, or should slay a lamb or calf capable of living, nor sheep nor wether.

It was forbidden that any bishop should ordain laymen to the order of clerks beyond the number necessary for serving the churches, lest the king's jurisdiction should be decreased or diminished.

It was ordained that the poor should be sustained by parsons, rectors of the churches, and by the parishioners, so that none should die by default of sustenance.

It was ordained that fairs and markets should be held in certain places, and that buyers of corn and beasts should give toll to the bailiffs of the lords of the markets or fairs : to wit, one halfpenny for ten shillings of goods, and for less less, and for more more, in proportion ; no toll, however, was to exceed one penny for one kind of merchandize. This toll was ordained as evidence of the contract, for every privy contract was prohibited. It was ordained that no action should be received in judgment if there were not present proof by witnesses or some other thing, and that no one should be bound to answer a writ, in a venial action in the king's court, before a judge commissary, until the plaintiff should have found security for damages and reimbursement of expenses if he failed in his action save only the recognitions of the four petty assizes, certifications, attaints, redisseisins, and other cases which likewise belong to the king *ex officio*. King Henry I. mitigated this ordinance in the following manner in favour of poor plaintiffs, that those who had not sufficient present security should pledge their faith to make satisfaction to the utmost of their power, and according to a reasonable taxation. In summonses the same rule. In hatred of perjury attaints were ordained in all actions.

It was forbidden that any foreign merchant should frequent England save at the four fairs, and that no [alien] should dwell in the land for more than forty days.

It was established by the courtesy of King Henry I. that all husbands surviving wives who had conceived

ceux qe sorvequissent lur femmes dunt eles usent conceves tenissent les heritages lur femmes a totes lur jours.

Plusours autres ordenaunces se firent, e puys unt este fetes, en eide de la pees solom ceo qe apres iert dist.

Ch. IV. Division de Pecche.

Del pechie est breve division ; car mortel ou venial solum ceo qe ipert es peynes. Les mortiels sunt ces, le crim de majeste, le crim de faussonerie, le crim de traison, le crim darson, le crim de homicide, le crim de larcin, e le crim homsokne.

Ch. V. Del pecchie de Majeste.

Crim de majeste est un pecce horrible fet a Rei, mes ceo est au Roi celestre ou a Rei terrestre. Ver le Rei de cel en iij maneres, par heresie, reneierie, e sodemie : ver le Roi de la terre en iij maneres, par ceus qi occient le Rei ou compassent del fere ; par ceus qe le desheritent del Reaume, ou traissont son host, ou compassent del fere ; e par ceux avoutres qi purguissent la femme le Roi, ou la fille le Roi einznesce legitimee einz ces [1] qe ele seit marie en la garde le Roi, ou la norice letaunt le heir le Roi.

De Heresie

Heresie est une mauveisse e fausse creaunce sourdant de errour en la dreite foi crestiene. Cest pecchie est sorcerie e divinaille qe sunt membres de heresie. En cas nient notoires satteignent par mi presumpcions de males œvres defenduez, sicom est de ceus qi par malart sourdant de male creaunce, e ascune foiz de defaute de ferme creaunce, funt mervoilles damaious ; e ascune foiz satteignent par confessions, e aperte avouerie del errour.

De Sorcerie

Sorcerie est un art a deviner. Devinail proprement soune en mal, sicom prophecie soune en bien. De devinaille e de ses membres. Devinaille se soloit fere en plusors

[1] Corr. *ceo.*

by them should hold the inheritance of their wives for all their days.

Divers other ordinances were made then and afterwards, in aid of the peace, as will hereafter be said.

Ch. IV. Division of Sins.

There is a short division of sins, for they are either mortal or venial, as the penalties show. The following are mortal sins: the crime of laesa majestas, the crime of falsification, the crime of treason, the crime of arson, the crime of homicide, the crime of larceny, and the crime of hamsoken.

Ch. V. Of the Sin of Laesa Majestas.

The crime of laesa majestas is a horrible sin committed against the king, and this may be against the king of heaven or earth. Against the king of heaven in three ways: by heresy, apostasy, and sodomy; against the earthly king in three ways: by those who kill the king or compass his death; by those who disinherit him of his realm, or betray his host, or compass to do so; and by those avowterers who defile the king's wife, or his eldest legitimate daughter before her marriage, she being in the ward of the king, or the nurse suckling the heir of the king.

Of Heresy

Heresy is a wicked and false belief arising from error in the true Christian faith. This sin includes sorcery and divination, which are species of heresy. In cases which are not notorious guilt is proved [either] by presumptions arising from evil and forbidden deeds, as is the case with those who by bad arts arising from bad belief, or it may be from want of firm belief, work hurtful marvels, or else by confession and open avowal of error.

Of Sorcery

Sorcery is the art of divination. We use 'divination' in an evil sense, as we use 'prophecy' in a good sense. Of divination and its species. Divination is wont to be made in

especes. Dunt une manere de divinaille se fet par le mal feie par laquel la fitonesse suscita Samuel qi garni Saul de sa mort. Lautre espece est periromancie qe ceo fet par le fieu. Lautre est aermancie qe se soloit fere par signes en leir. Lautre fu idromancie qe se fist par signes en euue. Lautre fu geomancie qe se fist par signes en la terre. Lautre fu nigromancie qe se fist par morz qe lem fesoit parler. Lautre fu augurrie qe se fist par signes en volz, chanz, e gargons doiseaus. Dautrepart soloient ascuns divinours crere en sors, ascuns en songes, ascuns en trouveure de vers el psauter, ascuns emporter evvangires e charmes as cols, ascuns en esternuers, ascuns enchantement e charmes, ascuns ensignees de boiaus des bestes, e des espaules de motouns, ascuns es signes de paumes, ascuns en estrenes,[1] e es priners[2] encontres. Ascuns furent appellez mathemaz e mages qe devinerent par les estoilles, autres furent arriols qi pristent respons del deable parmi mahoumez, autres aruspeaus qi aovrerent es neuz[3] es jours e es houres e issi ordenerent lur bosoignes, e autre manere furent plusours. Dunt totes maneres de divinaille es escomenge e maudite de dieu e del eglise, e defendu tant com mahoumerie, e chose contre la droite foi. E ceo proeve seint Augustin par mouz des resons, e de ceo est qe tuz ceux qe travaillent a deviner pur saver choses futures, si dounent a creatures ceo qe appent soulement a dieu. Parunt tieux menestreus sunt tuz pernables e remuables hors del comunaute del seint people deu, si qe nul bon crestien ne soit entochie de lur art, ne parcener de lur pecchie.

Item de ceux qi encorunt le crim de majeste e primerement de perjurie. Le pecche de majeste est vicine a plusours autres pecchiez. Car tuz ceux qi pecchent en perjurie par quei lem soit fei mentu ver le Roi cheent en ceste pecchie, sicom les ministres le Rei jurez a fere droit e se perjurent en ascun point, e sicom ceux qi descressent le Rei de ces franchises[4] dautre manere de droit appendaunt a la coroune

[1] Or *estreues*.
[2] Corr. *primers*.
[3] Or *ueuz*.
[4] Supp. *ou*.

several ways.[1] One manner of divination is by the devil by which the witch raised Samuel who warned Saul of his death. Another species is pyromancy, which is done by fire. Another is aeromancy, which is done by signs in the air. Another was hydromancy, which was done by signs in the water. Another was geomancy, which was done by signs in the earth. Another was necromancy, which was done by making the dead speak. Another was augury, which was done by signs in the flight, song, and cries of birds. Again, some diviners were wont to believe in lots, others in dreams, others in the finding of verses in the psalter, others in carrying the evangelists and charms on their necks, others in sneezes, others in spells and charms, others in signs on the entrails of animals and shoulders of sheep, others in palmistry, others in gifts and first meetings. Others, again, were called mathematici and magi, who divined by the stars; others were haurioli, who took answers from the devil among the Mahometans. Others were aruspices, who observed nights, days, and hours, and thus ordained their business, and divers other sorts there were. All these manners of divination are excommunicated and cursed of God and the Church, and forbidden as much as Mahometry and things against the true faith. Saint Augustine shows this by many reasons, and hence it is that all those who labour to divine in order to know future things give to the creature that which pertains to God alone. Wherefore such workers are all to be seized and removed out of the community of the holy people of God, so that no good Christian may be tainted by their art, or partaker in their sin.

Again, of those who commit the crime of laesa majestas, and first of perjury. The crime of laesa majestas is akin to several other sins. For all those who sin in perjury whereby one belies one's faith to the king fall into this sin; such are the ministers of the king sworn to do right, who perjure themselves in any matter, and likewise those who deprive the king of his franchises or other manner of

[1] See c. 6, C. 26, q. 2.

par occupacions, ou purprestures, ou en autre manere, tut ne pecchent il mie mortelement.

En perjurie pecchent tuz ces feaux le Roi qi purpernent juresdiction sur le Rei, e se funt justices, viscountes, corouners, ou autres ministres, desavoer[1] de droit. En perjurie ver le Roi pecchent tuz les feals le Roi qi approprirent a eus juresdiction, contie, honour, hundred, sokne, return de bref, ou chose qe poit cheir en heritage, ou gardes, eschaetes, relefs, sutes, services ou mariages, feires, marchez, infangenthef, utfangenthef, wrec, weif, estrai, tresor mucie enterre garennes en lur demeines terres ou en autri, travers tolnen, pavage, pontage, chiminage, murage, cariage, ou reles[2] autres custumes. En perjurie ver le Rei pecchent ceux fealx le Roi qi pernent abjuracions de felons, e de futifs, e ne sunt mie corouners, ne garantiz del Rei. E ceaux qi oustent ascun enditee ou appelle de crim hors del roulle de corouner, e ceaux corouners qe plus defoiz qe une receivent apealx de provours, ou procurent qe homme innocent soit a tort appelle de provour. E ceux qi unt termine appealx de provors de fez foreins, ou par la ou ascun forein est appelle ; e ceux corouners qi suffrent a escient les chatieux de felons e de futifs estre meinprises del droit,[3] ou de les conceler en tute ou en partie, ou a lur oeps demeyne les eient retenuz al damage le Rei, ou aillurs les unt fet liverer qe as viles, ou plus del verrai pris en damage des villes funt mettre en roulle ; ou soffrent lur serjanz aver garnement ou autre chose qe seit prisable al oeps le Rei, ou les garnemenz des morz, ou delaient de fere lur office par coveitise.

En perjurie chient ver le Roi ceux ministres qi pardounent finz ou amercimentz qe au Roi appendent, ou autre manere de peine corporele ou pur annele[4] sanz especial garant, e ceaux ministres qe par somounces e aiornemenx funt bones genz travailler en vein sicom as

[1] Corrupt.
[2] Corr. *tiels*.
[3] The text as it stands does not make good sense. A negative may have been omitted.
[4] Corr. *pecuniele*.

rights belonging to the Crown, by encroachments, purprestures, or in other manner, though they do not sin mortally.

By perjury sin all those lieges of the king who encroach upon his jurisdiction, and of themselves make justices, sheriffs, coroners, or other officers against the law. By perjury towards the king sin all those lieges of the king who appropriate to themselves jurisdiction, to wit counties, honours, hundreds, sokens, return of writs, or other hereditaments, wardships, escheats, reliefs, suits, services, marriages, fairs, markets, infangenethef, utfangenethef, wreck, waif, estray, treasure hidden in the earth, warrens in their own lands or in another's, toll-traverse or other toll, pavage, pontage, chiminage, murage, carriage, or such other customs. By perjury against the king sin those lieges of the king who take abjurations of felons or fugitives and are not coroners nor authorised by the king. And those who remove [the name of] any person indicted or appealed of crime out of the roll of the coroner, and those coroners who more than once receive the appeals of approvers or procure the wrongful appeal of an innocent man by an approver. And those who have determined the appeals of approvers concerning acts done out of their territories or whereby any foreigner is appealed; and those coroners who knowingly allow the chattels of felons and fugitives to be mainprised against right, or conceal them, wholly or partially, or retain them to their own use to the damage of the king, or who cause them to be delivered otherwise than to the townships, or who set them down in the roll at more than their true price to the prejudice of the townships; or allow their servants to have garments or any other thing seizable for the king's profit, or the garments of the dead, or delay the performance of their duty through their covetousness.

Into perjury against the king fall those officers who forgive fines or amercements belonging to the king, or other manner of corporal or pecuniary punishment, without special warrant, and those officers who by summonses and adjournments cause good folk to labour in vain, as at gaol

deliverances de gaoles, assises, enquestes ou aillurs. E tuz cex fealx le Roi qe le maudient ou escomengent, e tuz ces fealx qi portent armes countre le Roi, e qi defuunt de sa bataille ou de son host dreiturel. E ceux ministres qe desavouablement estoupent et concellent qe genz ne voisent en guerre ove le Rei, ou il sunt tenuz daler, ou a ceo sunt renablement somouns, e qe gentz ne seient fetz chivalers for solom les establisementz de Reaume.

En perjurie cheent ver le Roi trestuz ceux fealx le Roi qe pledent ve de naam, e ne unt mie retourn de bref, ou tenent plez de prise davers ou dautre chose apurtenaunt a la juresdiction le Roi soulement, sanz especiale commission le Roi, ou conoissent en cas de vie, ou de menbre, denprisonment, de sanc espandu, de faus jugement, ou de chose desavouable de droit sanz commission del bref le Rei; e tuz ceux ministres le Rei qe meintenent faus actions fausses appealx ou faus defenses a escient.

En perjurie chient ver le Roi ceus ministres qe veent as pleintifs brefs remediaus de possession, datteintes, ou de fourme, ou autrement delaient droit ou vendent, e ceux qe a tort delaient ou desturbent droiz jugemenz, ou les fornissemenz, e ceux qe a tort fornissent torcenous jugemenz, e tuz ceux qe lur privileges ou franchises torcenousement usent ou trop largement. En perjurie vers le Roi pecchent ceux ministres qe pernent fins a autri oeps qe al oeps le Roi por tresor trovie por wrec weif estrai aliene, pur sanc espandu, enprisonement, ve de naam, reddisseisine, ou disseisine, ou perjurie[1] por resistence fere qe loial jugement nust execucion, de fornissement de torcenous jugement, pur usure, purpresture sur le Rei, ou pur autre chose dunt reconusance apent au Roi; e ceus recevours qe rien ne paient des dettes le Roi solum ceo qe enjoint lur fust a fere ou rendent partie por satisfaccion del entier e ne rendent au Roi le remenaunt.

En perjurie ver le Roi pecchent ceux qe chargent le Roi a tort de overaignes en chatiex maynovres e aillours, ou dautre fause despense. E ceux qe la pierre, la chauz,

[1] A mistake may be suspected.

deliveries, assizes, inquests, or elsewhere. And all those subjects of the king who curse or excommunicate him, and all those subjects who bear arms against the king, and those who flee from his battle or lawful host. Likewise those ministers who unlawfully hinder folk from going to the war with the king, to which they are bound to go, or to which they have received due summons, or connive at their absence, or procure that men be not distrained to knighthood according to the customs of the kingdom.

Into perjury against the king fall all those subjects who hold pleas *de vetito namii* and have not the [franchise of] return of writ, or hold pleas of the taking of beasts or other plea pertaining to the king's jurisdiction only, without special commission from the king, or take cognisance of cases of life, limb, imprisonment, bloodshed, false judgment, or thing disavowable in law, without commission under the king's writ; and all those officers of the king who knowingly maintain false actions, false appeals, or false defences.

Into perjury against the king fall those officers who refuse plaintiffs remedial writs of possession, attaint, or other writs of common form, or otherwise delay or sell right, and those who wrongfully delay or disturb right judgments and their execution, and all those who wrongfully execute tortious judgments, and all those who exercise their privileges and franchises tortiously or excessively. By perjury against the king sin those officers who take fines to the use of another than the king, for the alienation of treasure trove, wreck, waif, estray, or bloodshed, or imprisonment, ve de naam, redisseisin, disseisin, perjury, for resisting the execution of lawful judgments, for executing tortious judgments, usury, purprestures on the king, or any other thing the cognisance of which pertains to the king; likewise those receivers who pay none of the king's debts as was enjoined them, or render part in satisfaction of the whole, and do not pay over the remainder to the king.

By perjury against the king sin those who wrongfully charge the king with works [done] in repair of castles or elsewhere or other false expenditure. Likewise those who

merrim, ou autre chose le Roi, despendent aillours qe en sun service sanz suffisant garant.

En perjurie ver le Roi cheent eschaetours qe funt gast as gardes ou es fieus le Roi ou pernent veneison ou pesson ou autres biens desavouables ou seississent les chatieux des morz par lur auctorite e por loier les relessent; ou douuent vedues al damage le Rei ou funt damaiouse estentes al Rei e meins de la verrei value en respounent au Roi ou a escient soeffrent possessions demorer en mortemein qe deussent estre pris en la main le Roi, e dunt le Roi doit avoir les issues; ou qe plus rescevent de lur bailles qil nen respounent au Roi; ou qe a escient soeffrent feffemenz de possessions ou davoiessons de eglises prejudiciels au Roi; ou qe unt sufferz aliener gardez ou marriages en prejudice del Rei; ou soeffrent a prover ages denfaunz en damage del Rei, ou pernent fins pur gardes ou marriages sanz bref en prejudice del Roi, ou deseisent ascun par colour de lur office, ou levent deners de ascun de son propre amerciment.

En perjurie ver le Roi pecchent viscountes qe trop chargent lur ostes par surcharge de gent de chevaus, ou ceo [1] chiens, e qe levent fins ou amercimenz pur eschaps de prisons, ou pur autre chose desavouable de droit, einz ceo qe les eschaps soient ajugez par justices en eire, e qi accressent ou amenussent fins ou amercimenz outre la volunte des affoerrours ou jurours. E ceus ministres qe concelent genz deliverables en prison e ne les presente mie en jugement.

En perjurie pecchent touz ceux ministres qi sunt repernables de la soffrance negligence ou consence des fraunchises ou des droitz le Rei aliener a tort occuper ou sustrere, e ceux qe aillours el reaume changent veille moneie defendue pur novele qe al chaunge le Roi.

[1] Corr. *de*.

expend the stone, lime, timber, or other thing belonging to the king, elsewhere than in his service without sufficient warrant.

Into perjury against the king fall escheators who make waste in the wardships or fees of the king, or take venison, fish, or other things unlawfully, or seize the chattels of dead persons by virtue of their authority and release them for reward, or endow widows to the damage of the king, or make extents prejudicial to the king and answer for less than the true value of the property to the king, or knowingly allow possessions to remain in mortmain which ought to be taken into the king's hands, and of which he ought to have the profits. And those who receive more from their bailiwick than they answer for to the king, or who knowingly allow feoffments of possessions or advowsons of churches prejudicial to the king, or who have allowed the alienation of wardships, or marriages to the king's prejudice, or allow [premature] proof of the ages of children to the king's prejudice, or take fines for wardships or marriages without writ to the king's prejudice, or disseise anyone by colour of their office, or take money from anyone for their own amercement.[1]

By perjury against the king sin sheriffs who overburden their hosts with too many folk, horses, or dogs, and who levy fines or amercements for escapes from prison, or other thing disallowed by law, before such escapes are adjudicated on by justices in eyre. Likewise those who increase or diminish fines and amercements fixed by affeerers or jurors. And those officers who conceal in prison persons who should be delivered, and do not present them for judgment.

By perjury sin all those officers who are guilty of negligently conniving at the alienation, occupation, or subtraction of the franchises and rights of the king, and those who anywhere in the kingdom change old forbidden money for new save at the king's exchange.

[1] A sheriff who has been amerced for official misconduct must not exact the amercement from his justiciables.

Ch. VI. De Fausonerie.

Faussonerie se fet en ij. maners : *par* fausser le seal le Roi, e *par* fausser sa moneie.

Son seal porra estre faussie en plusours maners. Il est faussie a totes les foiz q*e* bref, escr*i*st, ou l*e*ttre en est seale, dunt le gros, e la matire, ou la fourme nest avouable p*ar* le Rei, ne p*ar* lei, ou p*ar* les droitz usages del reaume, q*e* nest mie a entendre de chescun bref abatable. Il est faussine si lem en seale ap*re*s ceo q*e* li chaunceler ou autre gardein sav*e*ra qil eit son garant p*er*du p*ar* mort ou en autre manere. Il est faussie q*uant* br*e*f, ou lettre, le passe countre le defens le Rei. Il est faussie p*ar* ceus qi ensealent p*ar* plates [1] contrefetes, e p*ar* tuz ceaux qi ensealent de male art, ou p*ar* quointes nient avouable. E si est faussie p*ar* ceaux q*e* ensealent, e ne sunt mie auctorizes de sealer.

De la moneie falsee. La moneie estoit ordene ronde, e quarterable, e soleit issi estre ferue q*e* li forein cercle fust parant p*ar* tut e entiere, ou autrement ne fust point p*er*nable, e q*e* la livere fust de xij unces de fin argent, e si estoit assentu q*e* le Roi pr*i*st vj d. pur le seal de chescun bref e xij d. p*ur* le coin de chescun livre de novel moneye, e q*e* plus de manere de moneies ne courreient el Reaume. La moneie est faussee p*ar* ceus qi la funt nient avouable p*ar* male coveitise de gaigne.

Ele est fausee p*ar* ceus qi la funt e ne sunt mie auctorisez ne garantiz de la fere. Ele est faussee p*ar* ceus q*e* p*ar* male gaigne le funt de plus de allai del droit. Ele est faussee p*ar* tuz ceaux q*e* la funt sanz le coin le Rei. Ele est fausee p*ar* tuz ceaux qi la contrefunt de mal art e p*ar* ceux qi la retonde*n*t ou liment p*ar* male gaigne.

[1] Houard suggests *plits*.

Ch. VI. Of Falsification.

Falsification is committed in two fashions: by falsifying the king's seal, and by falsifying his money.

His seal can be falsified in several ways. It is falsified every time that a writ, script, or letter is sealed with it, of which the substance, matter, or form cannot be warranted by the king, by the law, or the right customs of the realm; but this is not to be understood of every abatable writ. It is falsified if a man seals with it after that the chancellor or other keeper is aware that he has lost his authority by the death [of the king] or in any other manner. It is falsified when a writ or letter passes it against the king's orders. It is falsified by those who seal with counterfeit plates, and by all those who seal by evil art or unlawful trick. It is falsified by those who seal with it and are not authorised to do so.

Falsification of money. Money was ordained round and quarterable, and ought to be thus struck, so that the outer circle should be apparent all round it and unbroken, or otherwise a coin was not to pass; and that the pound should be twelve ounces of fine silver; and it was agreed that the king should take sixpence for the sealing of each writ and twelve pence for the coining of every pound of new money. It was ordained that other kinds of money should not be current in this realm. Money is falsified by those who make it unlawfully through evil desire of gain.

It is falsified by those who make it and are not authorised or warranted to do so. It is falsified by those who for evil gain make it with more alloy than is right. It is falsified by all those who make it without the king's die. It is falsified by all those who counterfeit it by evil art and by those who clip it or file it for evil gain.

Ch. VII. Diffinicion de Traison.

Traison ne se fet forq*e* p*ar* entre alliez q*e* poet estre p*ar* linage p*ar* affinite p*ar* homage p*ar* serement e p*ar* loier. Par sanc com si lun parent face a lautre chose q*e* li tort[1] a mort ou a desheriteson ou a apert hontage. Car la q*uan*tite de traison est a courcement de vie ou doute de menbre ou descrees de t*er*iene honour ou encrees de vilenie honte. E en mesme la man*ere* se fest cest pecchie p*ar* entre affins sicom p*ar* entre socres, gendres e parenz. Car sicom cósinage est lien de div*er*se p*ar*ceners descendantes de . j . cep e estretes de carnele engendrure, aussi est affinite p*ro*scheinetie de p*er*sones descendaunt de carnele couple ou nul p*ar*ente nen est.[2] Esicom ceste pecchie se fet p*ar* entre affins e cosins aussi se fet p*ar* entre alliez. Alliaunce se fet ascun foiz p*ar* loier par homage e p*ar* s*er*ement, q*e* avient ascune foiz de feaute issant de s*er*vage de fieu, e ascun foiz issant de serement de service del cors. E sicom li . j . des alliez parenz ou affins fet ceste pecchie ver lautre en mesme la manere se fet pecchie al revers. Par loier cum si cil q*e* jeo averai louue pur moi fere leaute e seit seisi del men cum de manger ou dautre doun, ou loier ou curtoisie, faussee mon seel, ou porgice ma fille en ma chaumbre, ou ma femme, ou la norice de mon heir letaunt, ou fet chose q*e* me court a mort p*ar* felon compassemeut ou g*ra*ndment a deshonur, ou damage de cors, ou de mes biens, ou descoevre mon conseel q*e* seit chargeant ou ma confession. E loier fet a entendre fieu, possession, robe, seele, pension, eglise, rente, ou autre doun, e manger e boivre, durant le loier. E aussi com cist me poet t*ra*hir qil p*ri*nt del mien tant cu*m* il en est seisi, en meme la manere poes je pecchier ver li. E au tiel action en ad il ver moi cum jeo de ver li.

[1] Corr. *cort* (?)

[2] Our author is referring to definitions current among the canonists. Thus Johannes Andreae: "Consanguinitas est attinentia personarum ex eo proveniens, quod una persona descendit ab altera vel ambae ab eadem. Affinitas est personarum proximitas ex coitu proveniens omni carens parentela."

Ch. VII. Definition of Treason.

Treason can only be committed between those allied, and they may be allied by blood, affinity, homage, oath, or by hire. By blood, as if one kinsman does to another a thing which tends to his death, disherison, or open shame. For the essence of treason is the shortening of life, fear of limb or diminution of earthly honour or increase of villain shame, and in like manner is this sin committed between persons connected by affinity, as between sisters in law, brothers in law, and other such kinsmen; for as consanguinity is a bond between divers parceners descending from one stock and arising from carnal engenderment, so affinity is the relation between persons established by carnal copulation where there is no common ancestry. And as this sin is committed between persons who are kin by affinity or consanguinity, so also it can be committed between those who are allies. Alliance is created by hire, homage, or oath, which oath is sometimes an oath of fealty issuing by way of service from the fee, and sometimes an oath of bodily service. And just as one of the allies, or persons related by blood or marriage, can commit this sin of treason against the other, so *vice versa*. By hire, as if he whom I have hired to do me loyal service and who is seised of my property, for example by way of food or other gift, wages, or guerdon, either falsifies my seal, or defiles my daughter in my room, or my wife, or the nurse suckling my heir, or does something with felonious compassing which tends to my death, great dishonour, damage to my body or estate, or reveals either my counsel with which he is intrusted, or my confession. By hire is to be understood fee, possession, robe, seal, pension, church, rent, or any other thing given, including meat and drink, during the service. And in the same way that a person who takes of my property and is seised thereof can commit treason against me, in like manner can I sin against him. Such action as he can bring against me can I bring against him.

Ch. VIII. De Ardours.

Ardours sunt qi ardent cite, vile, mesoun, homme, beste, ou autre chatieux de lur felonie en tens de pees pur haine ou vengeaunce. E si ascun met le fu a homme felounessement de quoi il est brullure ou blessure par le feu tut ne seit il occis par le feu jalemenz nen est le pecchie mortel. En cest pecchie cheent ascun foiz manaceours del arson.

Ch. IX. De Homicide e de sa Nature.

Homicide est occision de homme par homme fete. Car si par beste ou mescheaunce adunc nest pas homicidie. Cest pecchie chiet en ij maneres par langue e par fete. Par langue en iij maners par conseil comandement e defense. Conseil cum qi conseil dautre occire e ausi de comandement. Defense cum qi defent sustenaunce de homme. Par fet en plusours maners ascune foiz par coup, ascune foiz par venim ou poison, ascune foiz par necessite e ascune foiz par voluntie. Par coup sicom apres piert en les appeax. Par poison venim ou entouche cum qi par coverte felonie e feinte amiste doune a autre a manger ou autrement user chose corrosive ou entouche ou envenime ascune chose dunt home seit occis tart ou tempre. Par enprisonement cum qi devient [1] cors de homme par colour de droit jesqes a la mort. Par cas cum qi gette ou trete a oisel, ou a autre chose, e ascun en seit occis par mescheaunce, ou par cheir de arbre, e tiex autres cas semblables. Mes distinctez ou li occisour fet chose qe il poet de droit e dunc ne pecche il nient: ou il fet chose qe il ne deit e met neqedent la diligence qil poet criaunt e garnissant, e uncore ne pecche il mie grantement; mes cil ne fet il pecche

[1] Corr. *detient.*

Ch. VIII. Of Arsoners.

Persons committing arson are those who burn city, town, house, man, beast, or other chattels feloniously in time of peace for hatred or vengeance. And if any put fire to a man feloniously whereby he is burned or wounded, notwithstanding that he is not killed by the fire, nevertheless the sin is mortal. Into this sin fall sometimes persons who threaten arson.

Ch. IX. Of Homicide and its Nature.

Homicide is the killing of a man by a man.[1] For if [the killing] is caused by an animal or mischance, then it is not homicide. This sin is committed in two ways: by word and by deed. By word in three ways: by advice, command, and refusal. By advice when a person advises the killing of another, and so also in the case of command. By refusal when one man refuses sustenance to another. By deed in several ways: by blow, venom, or poison, and the deed may be either done by necessity or of free will. By blow, as hereafter is seen in the chapter on appeals. By poison, venom, or drug when a person by hidden felony and feigned friendship gives another to eat or otherwise use something corrosive, poisonous, or venomous, whereby he is killed after a time or directly. By imprisonment, as where a person detains the body of another under colour of right until he dies. By accident, as where one throws or shoots at a bird or other thing. And such homicide may be by misadventure, the falling of a tree, and such other similar accidents. But we must distinguish whether the killer is doing a thing which he may do rightfully, for then he does not sin; or else he is doing something he ought not to do, but nevertheless exercises all the diligence he can by crying out and giving warning, and in that case he does not sin greatly; but if he does not exercise such

[1] A great deal of what follows seems to have been taken with little change from Bracton, f. 120 b.

mortelment. Par necessite, distinctez le quel cele necessite est eschuable ou noun, e si eschuable li pecchie est mortele. Par volunte e ce purra estre de li ou dautre p*er*sone. De ly si cu*m* en cas ou genz se pendent ou neient ou autrement se occient de lur p*ro*pre felonie. Dautre sicom p*ar* coup, famine, e autre peyne, en que cas tuz sunt homicides. P*ar* volunte se fest aussi cest pecche sicu*m* par ceux qi peynent homme tant q*e* il gehist aver pecche mortelment cum point ne fist einz pur estre allegie de la peyne desiraunt la mort confest felonie faussement : e ascune foiz diex [1] p*ar* recorz de corouners ou de justices destruz. E si cum est de ceux p*ar* queus contrez, enfanz, e autres qi ne pount aler sunt gitez et lessez en deserz, ou en tieus lieus q*e* en eus ne remeint qil ne moerent de disede [2] tut les envoit dieu socours. E ausi sunt homicides de volunte faus jurours temoins e ceux qi apelent autres ou esclandrent p*ar* enditement ou en autre manere encusent fausement, es queux ne remeint q*e* la mort ne ifust. E ausi ceo fet cest pecchie p*ar* ceux q*e* enp*ri*sounent gent en tiex lus ou en teles peynes les mettent ou lem purra trovir p*ar* enqueste qil estoient plus prees de la mort p*ar* ceux mauveis lus ou celes peines. Par iij. maneres estoit diex occis car Longis le tua de fet ovesq*e* les autres q*e* li pendirent ou penerent. Par langue ou par dit loccist Pilast q*e* li comaunda doccire. E p*ar* voluntie loccistrent les faus testmoins e toux ceaux q*e* si consentirent. E de ceo est q*e* les evangelistes varient des houres de sa mort en ses passions. Cest pecchie contient plusours braunches cestasaver enp*ri*sonement, mahain, plaie, bat*er*ie, e faus tesmoignaunce en cas.

Enp*ri*sounement est torcenouse detenue de cors de hum*m*e. E ceo poet estre en ij maners, ou en com*m*un p*ri*son roiale, ou en p*ri*son p*ri*vee e defendue. En la comun p*ri*son ne fet nul a mettre si noun p*ur* mortel pecchie atteint ou p*r*incipalment appele ou endite, e p*ar* jugement

[1] Corr. *tiez*. [2] Corr. *disete*.

diligence he sins mortally. And if it be a case of necessity we must distinguish whether the necessity were avoidable or not; if avoidable the sin is mortal. A voluntary homicide may be of oneself or of another person; the former is the case with persons who hang, drown, or otherwise kill themselves of their own proper felony. One can kill another by blow, famine, or other torment, in which case all [the partakers] are homicides, and this sin is also committed by will in the case of those who torture a man so that he confesses to a mortal sin he has not committed, and, to alleviate torment, preferring death, falsely confesses a felony. And sometimes such persons are brought to their end by the records of coroners or justices. And in like case are those by whom cripples, children, and others who cannot walk are cast and left in desert places, or in such spots that if they do not die of hunger it is no thanks to those who put them there, albeit God sends them aid. And homicides in will are also false jurors, false witnesses, and those who appeal others or defame them by indictment, or in other ways accuse persons falsely so that it is not their fault that death does not follow. This sin is likewise committed by those who imprison folk in such places, or put them in such pain, that it can be found by inquest that they were nearer death by such evil places or pains. In three ways was God killed, for Longinus killed him in fact with the others who hung or tortured him. By tongue or by word Pilate killed him, for he ordered his killing, and by will the false witnesses killed him, as did all those consenting thereto. And this is the reason why the evangelists vary the hour of his death in their stories of the Passion.[1] This sin has several branches, to wit, imprisonment, mayhem, wounding, battery, and sometimes false witness.

Imprisonment is the tortious detainer of the body of a man, and is of two kinds:—either in the common royal prison or in a private and forbidden prison. Into the common prison no one is to be put if not attainted, appealed as a principal, or indicted for mortal sin, or by judgment

[1] See c. 23, D. 1, *de poen.*

de faus e torcenous enprisonement. Prison privee est ascune foiz droiturele e avouable e ascune foiz torcenouse. Ele est droiturele e avouable quant homme plevisable pris est mis en garde jesqes a taunt qil seit plevi de fere ceo qe il devera. En gard sunt genz en plusours maneres, en une manere par garaunt de droit sicom est de enfanz dedenz age, femmes en la garde lur barouns, genz de religion en la garde de lur abbez priours ou autre chief de lur mesoun, e serfs en la garde de lur possessours. En autre manere sunt genz en garde par comun assent sicum est de fous nastres, de gentz trop gascomes,[1] dostages, darrages, e de ceux qe sunt atteinz de prisoner pecchez veniaus infamatoires qi sunt agarder en cas. El pecchie domicide cheent mortelement trestuz ceaux par queus homme moert en prison. E ceo poeit estre ou par les juges qi trop delaient a fere droit, ou par duresce des gardeins, ou par autre encheson desavouable. En ceste pecchie cheent genz par qi defaute gens moerent de disete qui les sunt tenux a sustenir, e ceux qi occient homme en prison par furcharge [2] de peyne en cas quant ascun est juge a penaunce, e tuz ceux qi jugent homme desavouablement a la mort, e tuz ceaux qe sei assentent, e tesmoins qe fausement testmoignerent mortel pecchie sur homme innocent.

En ceste pecchie cheent fous jures e fous fisiciens en cas e manaceours doccision e ceaux qi autre batent ou naffrent par quei il soit plus loinz de sa vie e plus pres de sa mort.

Mahain est defaute de menbre ou afebleure par brusure ou rasture de os de homme par unt il seit meins pussant a cumbatre. E Turgis dist qe perte de denz devaunt est mahain, e reddour del poucier e del petit dei e del dei joignaunt e de mes ces ortieux il tendroit el pee est ausi mahain, e par plus de reson es cas ou plus de pierte piert. E Sennale dist qe pierte de coilz est mahain si nature ne les eit tolliz. Mes perte de denz messelez ou del nees ou desorailles ou de baleures nest mie mahain, tut enseit li cors revilie deshonore. E Billing dist

[1] Corr. *gastours.* [2] Corr. *surcharge.*

for false or tortious imprisonment. Private imprisonment is sometimes lawful and avowable, and sometimes tortious. It is lawful and avowable in the case of a man plevisable who is taken and put in ward until he shall be plevied to do what he ought. In ward are folk in several ways: in one way by warrant of law, as is the case with infants under age, wives in the ward of their husbands, men of religion in the ward of their abbots, priors, or other the heads of their houses, and serfs in the ward of their possessors. In another way are persons in ward by a general ordinance, as is the case with idiots, prodigals, hostages, madmen, and those who, having been attainted of venial infamatory sins, are imprisoned as is right in certain cases. Into the sin of homicide fall mortally all those through whom a person dies in prison. And this may be either through judges who too long delay to do right, or by the duress of the keepers, or by other disavowable act. Into this sin fall folk through whose default those whom they are bound to support die, and those who kill a man in prison by excessive pains when he is adjudged to do penance, and all those who wrongfully condemn a man to death, and all those assenting thereto, and witnesses who falsely swear mortal sin against an innocent man.

Into this sin fall perverse[1] jurors, and, in certain cases, perverse physicians, and those who threaten death, and those who beat or wound another whereby he is further from life and nearer to death.

Mayhem is loss of limb or enfeeblement by breaking or crushing of a man's bone whereby he is rendered less able to fight. Turgis said that loss of front teeth is a mayhem, and of the thumb, and of the little finger and the finger joining; and he held that the loss of the corresponding toes of the foot was the same, and, *a fortiori*, if there be any greater loss. And Senwel said that loss of one's stones was mayhem, if one had not been deprived of them by nature. But loss of molar teeth, of nose, ears, or lips, is not mayhem, though the body be vilified and dishonoured. And Billing

[1] It is difficult to render *fous*.

qe rasture pur tenurer los de la teste e leveure descarde del teste en [1] mahain e aussi des autres os.

De plaie

Plaie est matire de la mort fete par couper darme ou de broche felonessement qe se monstre par longour laour e profundesce, car de coup de piere ou de baston devient rerement plaie mes de brusure.

Ch. X. De Larcin.

Larcin est prise dautri moeble corporel trecherousement contre la volunte celi a qi il est pur male gaigne de la possession ou del us. Prise est dist car bail nest mie title de larcin ne liveree einz la case. Moeble corporel est dist pur ceo qe en biens nient moebles ou nient corporeles sicom de terre ne de rentes ne davoissons deglises ne se fet nul larcin. Trecherousement est dist, por ceo qe si loignour entendi les biens estre fiens a qi [2] il les poeit bien prendre, en tel cas ne sei fet mie cest pecchie. Ne en cas ou lem pren lautri par la ou lem entent qil plest al seignur de biens qe lem les preigne, mes a ceo covendra enseigner aperte presumpcion e evidence. Deux menbres sunt de larcin, lun qe se fet apertement par robberie, lautre qe se fet nuttantre ou privement de jour. Robberie se fet ascune foiz par larrons, ascune foiz par torcenouses destresces de baillifs e dautres qi sunt [3] torcenouses extorsiouns al menu poeple, ascune foiz par extrusours e disseisissors qi a force e apertement pernent autri biens com avant est dist, e ascune foiz par autres qi allopent autries femmes ou gardes ovesqe lur biens. En cest pecchie cheent tuz ceaux qe pernent lautri par lautrie [4] del rei ou dautre grant seignur, sanz le gre de ceaux as queux les biens sunt. Larcin se fet ascune fois par larrons aperz, e ascune foiz par trecheours, cum est en plusour manere de marchaundises, e sicom est de laborours qi emblent lur labours, e cum est de baillifs, recevours e administrors dautriz biens qi emblent en

[1] Corr. *est.*
[2] Corr. *siens e qe.*
[3] Corr. *funt*, which stands in margin.
[4] Corr. *lautorite.*

said that an abrasion of the skull, if splinters of bone were taken from the head, was mayhem; and so with other bones.

Wounding is the cause of death when it is brought about by cutting with spear or other arm feloniously, and the wound has length, breadth, and depth; for from a blow from stone or staff come bruises, but rarely wounds.

Ch. X. Of Larceny.

Larceny[1] is the treacherous taking of a corporeal movable thing of another, against the will of him to whom it belongs, by evil acquisition of possession or of the use. Taking, we say: for bailment or livery excludes larceny. A corporeal movable, we say: for no larceny can be committed of an immovable or incorporeal thing such as land or rent or advowsons of churches. Treacherously, we say: because if the taker believed the things to be his own, so that he could lawfully take them, in such a case he does not commit this sin. Nor does he where he takes another's goods believing that his taking them is agreeable to the owner; but in this case he must show some open presumption and evidence. There are two kinds of larceny: one committed openly by robbery, the other by night or secretly by day. Robbery is committed sometimes by thieves, sometimes by the tortious distraints of bailiffs and others who make tortious extortions from the smaller folk, and sometimes by extruders and disseisors who forcibly and openly take the goods of others, as was said before, and sometimes by others who elope with other men's wives or their wards with their goods. Into this sin fall all those who take a man's goods by authority of the king or other great lord, against the will of those to whom the goods belong. Larceny is committed sometimes by open thieves, and sometimes by tricksters, as is the case in many kinds of merchandise, and is the case with labourers who steal their labours, and with bailiffs, receivers and administrators of other persons' goods, who steal in rendering account.

[1] This definition, with the words about the *usus*, seems to go back to Instit. 4. 1. 1, rather than to Bracton, whom our author has been following in his account of mayhem.

rendaunt acounte. El pecchie de larcin cheent ceaux qi emblent borses ou maletes, e qi autre larcin funt *par* niceste ou quointise des meins, e tuz lur fautours. En ceste pecchie ceaux cheent qi soeffrent les larrons passer cum il les potreient arestier. E ceaux aussi q*e* les porreie*nt* prendre ou desturbir ou garnir autres de lur malice e point nel funt. E ceux qi les concelent pur amiste, thefbote, ou autre loier, ou a escie*nt* recettent lur larcin ou lur p*er*sones. En ceste pecchie cheent tuz ceaux qi emblent p*ar* fauses mesures, e faus pois, ou en autre manere de trecherie p*ar* coverture de marchaundise, e ceaux qi a escient le soeffrent cum il les poreient desturber, e ceaux qi robbent prisons de chose qil eient. En ceste pecche cheent tuz ceaux q*e* torcenousement am*er*cient la gent, ou outraiousement affoerent am*er*cimenz, ou qi out*rai*ousement ou torcenousement condempnent lur p*ro*eine en damages ou en peyne. E ceaux q*e* vieuz tresor qe au Roi appent ou wrec waif ou estrai q*e* au Roi apent a tort li detenent. E ceux q*e* lautri troevent e nel rendent cum il pount e scievent a qi. En ceste pecche cheent touz ceaux qi p*er*nent torcenous ou out*rai*ous tolnu en marche, citee, bourg, ville, molin ou aillours, e ceaux qi p*er*nent pavage, murage, chiminage, cariage ou dautre manere de custumes plus q*e* droit nest. En ceste pecche cheent ceux baillifs q*e* enquerent en tournz e en veuues de plus darticles q*e* de peccheours p*er*soneux, e de torz fetez au Roi, e a sa coroune, e de torz fetz al comun de poeple. E ceux q*e* p*ar* extorsions p*er*nent deners de fins fetes pur bel pleder, ou purquei les jurours ne seient enchesonez, e ceaux q*e* am*er*cent ascun de testee sanz renable affoerement de gent a ceo juree. En ceste pecchie cheent ceaux q*e* destreinent desavouablement, e ceux q*e* vendent nams p*ur* la dette le rey dedenz les p*ri*mers xv. jours. En ceste pecche cheent ceaux ministres de lescheqere e autres q*e* veent a fere aquitaunce souz le seal del escheqere a chescun de taunt cum il javera paie, e qi plus de une foiz funt une dette levee, e qi p*er*nent loiers p*ar* si q*e* veilles ne se facent

Into the sin of larceny fall those who take purses or bags, and who otherwise commit larceny by sleight and dexterity of their hands, and all their abettors. Into this sin fall those who allow thieves to pass when they could arrest them. Those also who could take or disturb the thieves or warn others of their malice and do not do so. And those who conceal them for friendship, thefbote, or other reward, or knowingly receive the stolen property or the thieves. Into this sin fall all those who steal by false measures or weights, or by other manner of trickery under pretence of merchandise, and those who knowingly allow such practices when they could prevent them, and those who rob prisoners of things which they have. Into this sin fall all those who tortiously amerce the people or outrageously fix amercements, or who outrageously or tortiously condemn their neighbour to pay damages or to suffer pain. And those who keep wrongfully old treasure which belongs to the king, wreck, waif or stray which belongs to the king. And those who find the goods of other persons and do not restore them when they can and know to whom they belong. Into this sin fall all those who take wrongful or outrageous toll in market, city, borough, township, mill, or elsewhere, and those who take pavage, murage, chiminage, carriage or other kind of custom to a greater amount than is right. Into this sin fall those baillifs who inquire in tourns and views of other matters than personal sins, and of wrongs done to the king, his crown, or the commonalty of the people. And those who by extortion take money by way of fine for beau pleder, or in order that occasion may not be found against the jurors, and those who amerce any out of their own heads without lawful affeerment of men sworn for the purpose. Into this sin fall those who levy unavowable distress, and those who sell naams for the king's debt within the first fifteen days. Into this sin fall those officers of the Exchequer and others who deny receipts under the Exchequer seal to anyone for the amount he has paid, and who more than once require payment of a debt, and who take reward in order that watch and ward be not kept in due manner

en due manere solom la constitucion de Wyncestre, ou pur soffrir qe genz ne seient mie garnie de armes solom comun agistement. En ceste pecchie cheent lierres dautri veneson, e de pesson enclos, de conyns, levres, fesanz e perdriz en garenez, e dautri colums e cines, e de eires de tote manere doiseaus. En ceste peche cheent tuz ceux viscontes, baillifs e autres roiales qi desavouablement par extorsions pernent deners del poeple, sicom pur defautes desavouables, ou pur travers ou pur autre custume desavouable, ou par ple dunt li juge nad nule juridiction, e ceux qe pernent de nouns pur ouster les des paneax e pur mettre autres. En cest pecchie cheent touz ceauz qe receivent terre ou tenement, cheval ou autre chose, e le usent outre le terme certein assis el louage, e ceux qe par lauctorite de lur baillies sunt[1] desavouables e cueillettes pur deners ou danrees cueiller, ou ble ou garbes pur scotales e filstuales, ou funt al poeple autre desavouable grevance en cas semblables, e ceux ministres qe une fin ou j. amerciment ou autre manere de dette funt plusours foiz lever de un homme ou de plusours, sanz fere restitucion. E ceux ministres qe pernent dautre qe del Rei ou de lur seignurs pur lur office fere, e ceaux qe plus de deuz foiz par an tenent cours de viscounte, ou qe plus de une foiz par an tenent veuue de francplege en une court, e ceaux qe par articles desavouables amercient la gent. E ceux qe as molins ou as marchez pernent outraious tolnu, e ceux qe amercient la gent par garaunt de presentemenz nient fez par duzeine entiere, ou dautres qe de francs hommes. En cest pecchie cheent ceaux qi funt chast dautri heritage, pur mauveise covitise ou pur haine. En cest pecche cheent countors qe pernent outraious salaire ou nient deservie, e qi sunt atteinz de male defense ou dautre desconvenue, e ceaux qe dedient lur seals en jugement, e ceaux qe enservent franc sanc par torcenouses destresces, e ceaux qe funt contraz defendues. En cest pecche cheent usurers qi prestent deners ou danrees

[1] Corr. *funt*.

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according to the Statute of Winchester, or in order that people be not provided with arms according to common assessment. Into this sin fall thieves of others' deer, fish in a stew, conies, hares, pheasants and partridges in warrens, pigeons and swans, eyrie of all manner of birds. Into this sin fall all those sheriffs, baillifs and other royal officers who unlawfully by extortion take money from the people, as for unlawful default, or for toll-traverse or for other unlawful custom, or for plea in which the judge had no jurisdiction, and those who take money to strike out names from panels and to put others therein. Into this sin fall all those who receive land, tenement, horse or other thing and use it beyond the time fixed at the hiring, and those who by the authority of their bailiwick make disavowable collections of money or money's worth, or take corn or sheaves for scotales and filstales, or do to the people any other unlawful grievance in like case, and those officers who levy a fine, amercement, or other kind of debt several times from one man or several, without making restitution thereof. And those officers who take anything from another than the king or their lords for doing their office, and those who more than twice a year hold sheriffs' courts, or more than once a year hold view of frankpledge in one and the same court, and those who under unlawful articles amerce the people.[1] And those who take outrageous tolls in mill or market, and those who amerce the people by warrant of presentments not made by a complete dozen,[2] or made by others than freemen.

Into this sin fall those who make waste of another's heritage, through evil covetousness or hatred. Into this sin fall pleaders who take outrageous or undeserved salaries, and who are attainted of bad or other improper defences, and those who deny their seals in court, and those who enslave free blood by tortious distresses, and those who make forbidden contracts. Into this sin fall usurers who lend money or money's worth at a fixed usury in a manner

[1] The articles are the 'capitula' of the view of frankpledge.

[2] Presentments made by a jury of less than twelve.

a usure certein affoer fet par mauveise covoitise. E ceux qi robbent ou emblent autriz mariages, ou allopent noneins, ou autri serfs oveqe autri biens, e tuz forstallours par queux vitaille e danrees sunt cheries. Forstallours sunt qe de denz vile enfranchie achatent pur regraterie fere e plus cher vendre desavouablement. E ceaux bochiers qe vendunt char sussemee pur seine, e ceaux pessonurs qi achatent e vendent countre droit establisement, e tuz autres de queux mestiers qe il seient fesanz trecheries en lur mestiers.

Ch. XI. De Homsokne.

Homsokne de aunciene ordenaunce est mortele pecchie, car droit est qe chescun eit quiete en son ostiel qe a la lei est. Cest pecchie ne se fet mie soulement par brusure de meeson einz se fet par feloun assaut de enemis en tiens de pees, sur ceux qi sunt en lur oustieux en lentencion de reposer en pees. E le quele assaut se fet pur occire, ou robber, ou batre ceaux qe en lur repos sunt de dienz meeson. E tut soit qe tieux peccheours ne complient lur porpos, sil facent neqedent ascune brusure par lur assaut de hus, fenestre, ou maisere, ou aillurs pur entrer felounessement, si sunt il coupables de cest crime. En cest pecche cheent ceaux qe felounessement a force entrent en autri ostel e funt la enz ascune violence countre la pees, tut ne facent il nule brusure, e ceo aussi bien de jour qe de nuit. E ceux aussi qe deseisissent la gent en cas ou il les engettent de lur mansions hors de lur pesible possessions a tort.

[*Ch. XII. De Rap.*][1]

Rap se fet en ij maneres cest assaver de choses, e de femmes. Cest pecchie est mis ja por ceo qe le Roi Edward le fist mortel par sa constitucion qe plus est funde sur volunte qe sur descrecion. Car . j . est stupre, autre fornicacioun, autre avouterie, autre incest, e autre rap, pur pro-

[1] Supplied from Table of Contents.

which shows evil covetousness. And those who rob or steal the marriages belonging to others, or abduct nuns or the serfs of others with other men's goods, and all forestallers by whom victuals or goods are raised in price. Forestallers are those who within an enfranchised town purchase to regrate or to sell dearer unlawfully. And those butchers who sell tainted flesh for sound, and those fishmongers who buy and sell against lawful ordinance, and all others, of whatsoever craft they be, working trickery in their crafts [fall into this sin].

Ch. XI. Of Hamsoken.

Hamsoken by ancient ordinance is mortal sin, for by law everyone who is inlaw is to have peace in his house. This sin is committed not only by breaking a house but also by the felonious assault of enemies in time of peace on those who are in their own houses with the intention of reposing therein in peace. The aforesaid assault must be made with intent to kill, rob, or beat those within the house. And albeit such sinners do not accomplish their intent, if nevertheless they in any way break in door, window, or outhouse or the like by their assault in order to enter feloniously, they are guilty of this crime. Into this sin fall those who feloniously and forcibly enter into another's house and do therein any violence against the peace, though they make no breaking; and that whether by day or by night. Likewise those who disseise folk by casting them out of their dwellings and out of their peaceable possessions wrongfully.

[*Ch. XII. Of Rape.*]

Rape is committed in two manners: it is either of things or of women. This sin is put here because King Edward made it mortal by his ordinance, which is founded rather on arbitrary will than discretion.[1] For stuprum is one thing, fornication another, adultery another, incest another, and rape yet another, if we speak correctly and

[1] See Stat. West. II. c. xxxiv.

prement parler e le pecchie destincter, dunt li . j . pecche est greignur de lautre. Stupre est a despuceler femme felounessement. Fornicacion est a porgesir femmes corrumpues nient espouses. Avouterie est a porgiser autri espouse. Incest est a porgesir cosine parente ou affin. Rap est proprement alopement de femme pur desir del mariage. Rap neqedent solom la volunte del estatut est pris pur . j . propre mot done pur chescun afforcement de femme de quele condicion qe le seit.

Ch. XIII. Del Office de Coroners.

As coroners furent enjoinz auncienement les gardes de plees de la coroune qe ne sestent ore forqe as felonies e aventures : solom ceo qe apiert. ij maners sunt de coroners : coroners generals e coroners especials. Al office de generals apend a recevre les appeals de tut le countie de felonies fetes dedenz lan, dagarder les exigendes de contumaz, e a pronuncier les jugemens des utlagaries. E pus denquere en qi plegeage tieux furent e ou dozeine ou qi meinpaz ou en qi garde. Coroners especiaux sunt corouners des franchises, ou de lus priveleges. Al office des uns e des autres appent aveoir les charoines as mortz de felonie ou de mescheaunce, e de veoir les arsons e les plaies, e les autres felonies cestasavoir chescun en sa baillie. E de veoir tresor trove, e wrec de la mer, e de recevir les conussaunces des felons, e de charger les abjuracions as futifs as seintuaires, e de prendre enquestes de felonies aventures en lur baillies. Quant a veuue de charoine de cors de homme, est son office qe si tost cum il enserra certefie a maunder al hundreder de lu qil face somondre suffisaument assez de bons genz de villes proscheins, qe a bref jour certein nome seient devant li a tel lu, a quel jour seit la charoine veuue. E sil la troeve enfoie seit desenfoie, e les nouns de enfoiours appent as corouners a mettre en remenbraunce. E si ele eit este

differentiate sins of which some are greater than others. Stuprum is the felonious taking away of a woman's maidenhood. Fornication is the defiling of an unmarried woman who is already corrupted. Adultery is the defiling of another man's wife. Incest is the defiling of a person related by consanguinity or affinity; but rape is strictly speaking the abduction of a woman with intent to marry her. By the arbitrary words of the statute, however, the one word 'rape' is used for every forcing of a woman of whatsoever condition she may be.

Ch. XIII. Of the Office of Coroners.

The keeping of the pleas of the crown was anciently entrusted to the coroners, but now this only extends to cases of felonies and misadventures: at least, so it seems. There are two kinds of coroners: coroners general and coroners special. To the office of coroners general it belongs to receive for the whole county appeals of felony made within the year, to award process of exigent against those who are contumacious, and pronounce judgment of outlawry. Further they are to inquire in what frankpledge or dozen, or in whose mainpast or ward, such offenders were. Coroners special are coroners of franchises, or privileged places. To the office of both it belongs to view the corpses of men killed feloniously or by mischance, to view arsons and wounds, and other felonies, each in his own bailiwick. And to make view of treasure trove, wreck of the sea, and to receive the confessions of felons, and to impose abjurations on fugitives in sanctuaries, and to hold inquests on felonies which have happened in their bailiwicks.

As to the view of the corpse of a man, it is his duty so soon as he shall be warned of it to order the hundredor of the place to summon sufficient good folk from the neighbouring towns, that on a near day named they may be before him at such a place, and on that day they shall view the corpse. If he finds it interred let it be disinterred, and he shall record the names of the buriers. And if it

detrete ou demagee par male garde, ou si longement ieue par quoi ele ne seit jugeable coment ele morust, seit ensi mis en roulle, si qe cele negligence seit punie a la venue le Roi ou de ces Justiciers errantz en cele parties. E si li un seit trovie jugeable, sen avise li corouner ovesqes les bones gentz adunc presentes de la manere de loccision, le quel il morust dautre felonie, ou de sue, ou de mescheaunce. E si de coup, le quel de bastoun, ou de piere, ou darme. E les nouns de ceaux qe ifurent somons e point ne ivindrent, face li corouner mettre en roulle, si qe li pecche de inobedience ne remeine despunie par quoi li coroner ne puisse a cel foiz fere son office par defaute de jurours.

En cestes enquestes ne tenent mie lu excepcions, actions, ne chalenges de parties vers les persones des jurours. Einz apent a fere paneax de plus sages e par eus, e les moiens par eus, e les meins pussanz par eus. E veuue la charoigne seit enterree. Fetz les paneax jurgent les duzeines; car coroners a celes enquestes, viscountes a lur tourns, baillifs a lur veuues, eschaetours e les ministres le Roi de ses foresz unt poer del auctorite de lur offices a mettre genz a serement, qe nul autre nad sanz le bref le Rei, e ceo est por la savvacion de la pees, e pur le droit le Rei, e pur comun prov.

Les articles sunt ces:—vous dirrez par vos seremenz de la mort de cest vu, le quel il morust de felonie ou de mescheaunce; e si de felonie, lequel de sa felonie demeine ou dautri; e si de aventure, le quel ele vint de dieu ou de homme; e si de famine, li quel de poverte ou de comun pestilence. E dunt il fu, e qi il fu. E sil morust dautri felonie queux il furent principals e queux accesories, e si hu e cri fu leve duement ou noun, e si les veisins y corrurent duement ou noun, e si la menee y fu a droit suye ou noun. E queux le manacerent de vie e de menbre, e queux furent

has been taken away or damaged by careless keeping, or if it has lain so long that one cannot tell how death happened, let it be thus entered on the roll so that this neglect may be punished at the coming of the king or his justices in eyre into those parts. And if it is possible to judge the cause of death, let the coroner confer with the good folk then present as to the manner of the killing, whether the deceased died from another's felonious act, or his own, or from misadventure. If from a blow, whether from a staff, stone, or arm. The coroner is likewise to set down in the roll the names of those summoned thither and who did not come, so that the sin of disobedience through which the coroner has on this occasion been prevented from fulfilling his office, from want of jurors, go not unpunished.

In such inquests there are no exceptions, actions, or challenges of the persons of the jurors by the parties. But it is the coroner's duty to make panels of the better folk by themselves, the mean folk by themselves, and the small folk by themselves. And when the corpse has been viewed let it be buried. The panels being made, let the dozens swear; for coroners at these inquests, sheriffs at their turns, bailiffs at their views, escheators, and the king's forest officers have power from the authority of their offices to put folk to the oath, and no one else has this power without the king's writ, and this for the preservation of the peace, the king's right, and common advantage.

The articles are these:—You shall say by your oaths concerning the death of him whom you have seen whether he died from felony or misadventure; if from felony, whether by his own felony or by another's; if from misadventure, whether it came from God or man; if from famine, whether from poverty or from common pestilence. And you shall say from whence he came and who he was. And if he died from another's felony, who were principals and who were accessories, and also if the hue and cry were duly raised or not, and if the neighbours ran thither as was right or not, and if the menée was rightly followed or not. Likewise who threatened his life or limb, and who were

pleges de sa pees. Ou sil morust *par* long enp*ri*sonement ou de peyne, e p*ar* queux il fu plus loinz de la vie ou plus prees de la mort. E issi de tutes les circumstaunces q*e* valer iporrunt p*ar* p*re*sumpcions. E en cas ou il morust p*ar* noier ou de cheir ou dautre cheaunce de dieu, issi qil nout poer de p*ar*ler avant sa mort, adunq*e* no*us* diez les nouns de t*ro*veours, e de iiij. p*ro*scheines veisins, e q*e* furent ces parenz. E sil estoit occis illoec ou aillurs, e si aillours p*ar* queux e coment il fu illoec portie. E pus de la value del deodande, e lespece, e as qi meins devient, car en cas ou hom*m*e moert p*ar* cheir, en tiel cas solom Randulf de Glanville est deodand q*ua*nqe est cause de la mort, sicom est q*ua*nqe moveit en la chose dunt il chei, sicom cheval, charette, molleen, molin sigles e roes. Neefs ausi e batex sunt ascune foiz deodandes, mes ne mie en la meer. Les sum*m*es sur chevals, les biens gisanz en neef, molins, charettes, baz, e meesons, ne sunt mie contables pur deodandes. E en cas dautri felonie, dient les jurours queux furent les felouns, en qi plegeage ou en diseine, ou en garde ou en meinpaz. E dunt il vindrent, e ou il retornerent e devindrent. E sil fust occis p*ar* faus jugement, adunqe deient queux e furent juges, queux ministres a fornir le jugement, e queux assessours ; e si de faus testmoinage queux ifurent jurours. E sil morust de felonie de li mesmes, adunq*e* dient la manere e la value des chatieux, e les nouns des p*ar*enz, de trovors e de veisins, e la value del estrep.

Ref[1] maneres sunt de accessoires—ceaux qi comandent, ceaux qi conseillent, ceaux q*e* iloent ou sei consentent, ceaux qi envoient, ceux q*e* eident, ceaux q*e* isunt p*ar*ceners el gain, ceux qi ensievent e nel destorbent p*ar* defense ne par excusement, e ceux q*e* les recettent a lur escient, e ceux q*e* isunt en la force.[2] Es aventures en torneiementz, bohorz,

[1] Corr. *Nef.*

[2] The principal's armed accessories are 'his force' or are 'in his force' (*forcia sua*).

pledges for his peace. [And you shall say] if he died through long imprisonment or torment, and by whose actions he was further from life or nearer death. And likewise of all the circumstances which could furnish ground for presumptions. In cases where the person died from drowning or falling or other visitation of God, and had not the power of speaking before his death, you are to say the names of the finders, and the four nearest neighbours, and who were his kinsfolk. And further if he were killed there or elsewhere, and if elsewhere by whom and how he was brought there. And then the value of the deodand, its species, and to whose hands it has come, for in cases where a man dies by an accident, according to Randulf de Glanvill, whatever is the cause of death is deodand; and that is taken to be whatever moved in the thing which caused the accident, *e.g.* a horse, cart, mill, sails or wheels of a mill. Ships also and boats are sometimes deodands, but not when on the sea.[1] Loads on horses, goods lying in a ship, mill, cart, boat, or house, are not deodands. And in case of the felony done by another, the jurors are to say who were the felons, in what frankpledge or what tithing they were, or whether they were in ward or in mainpast; also whence they came, and whither they went. And if the person was killed by false judgment, then they are to say who were judges and who officers in executing the judgment, who assessors; and if from false evidence, who were the swearers thereof. Further, if he died from his own felonious act, they are to say the kind and value of his chattels, the names of his kinsfolk, and the names of the finders and the neighbours, and the value of the waste.

Nine kinds of accessories there be: those who command, those who counsel, those who hire or are consenting thereto, those who send, those who aid, those who are partners in the gain, those who acquiesce and do not disturb the offenders by word or deed, and those who knowingly receive them, and those who go out armed. As to adventures in tournaments, combats, jousts, and medleys,

[1] See Bracton, fo. 122.

joustes, e lutes, ordena le Rei Henri le second q*e* por ceo q*e* tieux deduz sunt aventurous, se deit chescun ap*r*ester qe dieu le truice en seinte vie, si q*e* nul ne seit en mortel pecche ne atie autre, einz dona congie q*e* chescun en bone amour assaiast sa vigour a autres en places com*m*unes es avandiz deduz, par unt il se seust mieux eider vers ces enemis. E pur ceoq*e* nul ne idoit supposer felonie ne pecchie, nestoit mie q*e* corouners sentremettent des aventures q*e* escheent en teles com*m*unes assembles ou nule felonie ne fet acount*er*.[1]

Corouners soleient ausi fere lur veuues en sodomies, e es enfanz monstres q*e* naveient rien de humanite, ou q*e* aveient plus dautre creature q*e* de hom*m*e. E ceux fesoient les corouners fere enfoir, mes la seinte foi se ferme chescun jour de plus en plus, p*ar* unt genz ne se cumbrent mes si com*un*em*en*t de tieux orribles pecchiez fere cum eles soloient.

As arsons soloient aussi venir e enquere queux y mistrent le fieu, e coment e le quele felonie, ou de ivèresce, ou dautre mescheaunce. E si de felonie, queux y furent p*r*incipals, queux accessoires, e queux enfurent manaceours.

A la veuue del veil tresor trovie auncienem*en*t recous en t*er*re les ap*en*t denquere coment cel tresor fu trovie, e p*ar* queux, e combien. E sil isoit tut, ou attamie, ou tut emportie, e queux lunt emporte, ou, e cu*m*bien, e qi sont les troveours e les p*r*oscheins veisins.

A lur veuue de wrec les appent denquere ou li wrek vint a t*er*re, queles choses, cumbien, e la value destinctement p*ar* p*ar*celes : e si hom*m*e, beste, oisel, ou autre chose vivant, vint ovec ou noun. E issi p*ar* dividende soit livere a la p*r*oschein ville une ou plusors, por respondre ent al verrai seignur, si la veigne chalenge*r* e desresner de denz lan.

A sa veuue de plaie apent qil voie e face mettre en remenbraunce la langour, laour, e la profundesce, en eide

[1] *ne fuit a comettre*, Houard.

King Henry the Second ordained that, forasmuch as such sports are dangerous, everyone ought to prepare himself so that God may find him in holy life, that no one may be in mortal sin or hatred of another, but gave leave to every man to try his strength on others in good fellowship in public places in the aforesaid sports, whereby he might know how the better to defend himself against his enemies.[1] And because felony or sin is not to be presumed, coroners were not to meddle with mischances that happened in these public assemblies unless some felony were reported.

Coroners were wont also to hold their views in cases of sodomy, and on infant monsters who had nothing of humanity, or who had more of the beast than the man in them; and these the coroners caused to be buried. But the holy faith grows stronger every day, whereby folk do not burden their souls with such horrible sins so commonly as they used.

They are used also to attend at arsons and inquire who put the fire there, and how and by what felony, drunkenness, or other mischance it arose. And if from felony, who were the principals, who the accessories, and who the threateners.

At the view of old treasure anciently hidden in the earth, it is their duty to inquire how the treasure was found, by whom, and its value; further, whether it was entire, or had been tampered with, or completely taken away, and who took it away, whither, and how much, and who were the finders and the nearest neighbours.

At their view of wreck it is their duty to inquire where the wreck came to land, what things there were, how much, and the value of the separate parts thereof; and whether man, beast, bird, or other living thing came with it or not. It is then to be delivered to the nearest township, or divided among several townships, and they must answer for it to the true owner if he comes to claim it and prove his right within a year.

At their view of a wound it is their duty to see it, and cause to be put on record the length, breadth, and depth of

[1] We know of no such ordinance.

del blescie, en aventure si la plaie garrisse e il sen pleigne, qe li corouner pur tut le counte li puisse eider par son record. Aussi apent a eus aveoir hampsoknes, e denquere des nouns des felouns, e dunt il vindrent e ou il returnerent, e des manaceours e des autres circumstaunces.

Les jurours soient severees par duzzeines, si qe nul duzeine ne parle a autre, einz respoigne chescun juree par sei.

E receuz les presentementz e les verdiz, tant tost sunt il charchables dencuser les conspiratours qi eient procure desavoer [1] ascun peccheour ou denditer innocent en teles enquestes. E bien list as corouners denquere aillours, plus sovent, e par autres, sil entendent de plus atteindre del fet restrix.[2]

Trestuz les enditez par devant corouners, aussi ben del accessorie cum del principal sunt pernables al mandement des corouners par viscountes, e les principals sunt recevables, e les accessories sunt liverables as meinpernours. E en presence de eus, e de viscountes, sunt lur biens moebles e noun moebles pernables en la main le Roi. E par loiale ostente e dividende, sunt celes terres moebles liverables as vilees, por trover ent as prisons e a lur necessite [3] mesnee renable sustenaunce, e de respoundre ent au Roi del remanaunt, savve chescun droit ou as principalx sil sen aquitent, e as accessoires par meinprise.

E si ascun defut se defendre, ou defut ne voet estre justiciable a la lei, bien list a chescun del occire si autrement nel pusse prendre. E Bermond agarda qe les chatieux as futifs remeissent forfez au Roi, savve chescun droit, tut se rendissent il pus a la pees. E Iselgrim dist qil nest mie futif qi se presente en jugement einz ces [4] qe il seit utlaguie.

Si ascun se defut en seintueire e demaunde ent la protection, fet destincter, car sil est custumer lierre,

[1] Corr. *de sauver*.
[2] Our translation is conjectural. Houard refers to the Latin *retrudere*.
[3] Corr. *necessaire* (?).
[4] Corr. *ceo*.

the wound, in aid of the wounded, so that if the wound heals, and he complains of it, the coroner, on behalf of the whole county, may aid him by his record. It is also their duty to view hamsokens, and inquire the names of the felons, from whence they came, and whither they went, and the names of persons threatening, and other circumstances.

The jurors are to be separated by dozens, so that no dozen may speak to another, but each jury must answer for itself. And having received the presentments and verdicts, they are bound to accuse conspirators who have unlawfully procured that a guilty person shall be saved, or that an innocent person shall be indicted at such inquests. It is lawful for the coroners to make inquest elsewhere, more often, and by others, if they think they can thereby discover more as to concealed facts.

All persons indicted before the coroners, accessories as well as principals, are to be taken on the order of the coroners by the sheriffs, and the principals are to be kept, and the accessories delivered to mainpernors. And in their presence, and in that of the sheriffs, their moveables and immoveables are to be taken into the hands of the king; and by lawful extent and division these lands and moveables are to be delivered to the townships, so that they may find therefrom for keep of prisoners and for their necessary retinue a reasonable sustenance, and may answer for the remainder thereof to the king, saving every right to the principals if they be acquitted, and to the accessories when mainprised.

And if anyone makes default of defence or flees and will not be justiceable by the law, it is lawful for anyone to kill him if he cannot otherwise be taken. Bermund decided that a fugitive's chattels should remain forfeited to the king, saving every right, albeit that he afterwards came into the peace. Iselgrim said that he is no fugitive who presents himself in court before he is outlawed. If anyone flees to sanctuary and demands therefrom protection, a distinction is to be made, for if he is by habit a thief,

robbour, murdrur ou vagant nutantre, e pur tele soit conu e escrie del poeple e de ses pleges e ses deservers,[1] ou si ascun isoit corue pur dette ou pur peche nient mortel, ou sil eit este atteint *par* jugement de mortel pecche, ou autrement *par* sa conusaunce, e eit forjure le Reaume, ou eit este exile, bani, utlaguie ou weive, e retourne avaunt soun *ter*me, ou si ascun eit pecche mortelement en sentuaire ou joignaunt sur cele seurte, e cele esp*er*aunce de estre defendu del seint lu, tieu pora lem p*r*endre, e trere, e bot*er* hors del seyntueire, sanz fere offense ou p*r*ejudice a la franchise del seintueire. Mes endreit des peccheours qi de mescheaunce cheent en pecche mortel hors de seintueires, e p*ar* verrei repentaunce courrent as mosters, e commonement se *con*fessent contriz e repentanz, qi avant tiex trespas estoient de bone fame, si tieux demandent tuicion de leglise, as tieux g*r*anta le Roi Henri le tierce a Clarendone qil fussent deffenduz del eglise par xl jours, e ordena qe les villes gardissent tieux futifs p*ar* tute la quarantine, e mandassent as corouners.

Al a venue del corouner, est en leleccion del pecheour de sei rendre a la pees[2] le Rei, ou de conoistre son pecchie al coroner e al people e weifer la pees le Rei. Et sil se rent, seit livere a la gaole,[2] e attendre sa quitaunce ou sa condempnacion, e sil conoist mortel pecchie, e prie de isser le Reaume sanz la tuicion del eglise, voist a la fin del seintuaire, deschauz, desceint, en pure sa cote ou chemise, e jurge qil tendra le droit chemin a tel port, ou a tel passage q*e* il avera choisi, e ne demoera p*ar* nule part ij. nuz ensemble jesqes a taunt q*e* pur tiel pecche mortel q*e* il avera conu en audience del poeple eit veudie ceste Reaume, ne point ne returnerai en la vie le Rei .jj,[3] saunz soun counge, si li eit dieux e seintes evangelies. E pus pregne le signe de la croiz e la porte taunt cum il ert en la proteccion de leglise.

[1] Corr. *deseiners* (?).
[2–2] In the margin.
[3] These numerals must represent some corrupt reading.

robber, murderer, or a wanderer by night, and known and proclaimed as such by the people and his pledges or tithingmen, or if anyone is pursued for debt or sin not mortal, or if he has been attainted of mortal sin by judgment or by his confession, and has forsworn the realm, or has been exiled, banished, outlawed, or waived, and has returned before his time, or if anyone has sinned mortally in sanctuary relying on his safety, and hoping to be defended by the holy place, such an one, I say, can be taken, dragged and thrust out of the sanctuary, without offence or prejudice to its franchise. But as regards sinners who by misfortune fall into mortal sin outside the sanctuary, and who truly repenting flee to churches, openly declaring themselves contrite and repentant, and who before such wrongdoing were of good report, if such demand protection of the Church, to them King Henry the Third at Clarendon granted that they should be protected by the Church for forty days, and he ordered that the townships should guard such fugitives for the whole quarantine, and should inform the coroners.

At the coming of the coroner it is in the election of the sinner to surrender himself to the king's peace, or to acknowledge his sin to the coroner and to the people and waive the peace of the king. And if he should surrender himself to the king, let him be committed to the gaol to await acquittal or condemnation. If he acknowledges mortal sin, and prays to go forth from the kingdom without the protection of the Church, let him come to the limit of the sanctuary bare-footed, ungirt, in his coat or shirt only, and swear that he will keep the direct road to such port or such passage as he shall have chosen, and that he will not remain in any place two nights together until that for such mortal sin as he shall have acknowledged in the hearing of the people he has left the realm, and further that he will not return in the king's lifetime without his leave, so help him God and the holy gospels. And then let him take a cross, and bear it so long as he shall be in the protection of the Church.

E si ascun demoert en seintuarie outre la quaranteine par taunt jert forclos de la grace de la abjuracion fere, si la defaute seit en li outre qe le terme nul ne lur list a trover sustenaunce. E tut seient tieux hors de la pees e hors de la foi le Rei, nuli nequedent ne lur deit destourber taunt cum il sunt en la proteccion deleglise, sil ne seient trovez hors del chemin en volunte denfreindre lur serement, ou autre meffet el chemin.

Si li occis soit desconu en tieu cas apent as corouners a mettre murdre en roulle solom lestatut le Rei Knout quant il sen parti ver Danemache, qi ordena pur la savvacion de ses daneis qil lessa en Engleterre, qe par la ou homme desconu fust occis qe tut le hundred demorreit en la merci le Roi par le jugement de murdre.

Quartre choses excusent le jugement de murdre: lune si li felоun soit conu ou le occis, car si li felоun seit conu, adunqe porra leur atteindre la felonie; lautre si li felоun soit pris ou fuiz a mostier; la terce si loccision ne seit mie venue de felonie einz par mescheaunce; la quarte en cas ou homme est felоun de li mesmes. E pur ceo qe de homme conu ne se fet nul murdre, apent al corouners denquere en cels felonies de quèl lignage tieux occis furent, si qe lem sache par lur parenz qe tieux occis furent engleis de nacion.

Car si lem ne sache nomer nul des parenz, presumpcion jert qe il furent aliens, e de ceo est qe lem appele cel parentie englescherie, le quel qe parentie isoit troeve dever pere, ou dever mere. E si nul englescherie ensoit troeve jert le jugement murdre.

Al office de corouner apent aussi a recevre les confessions des felоuns en audience de testmoins. Dunt de une grant felonie fet par plusours peccheours avint el tens le Rei John, qe li . j . des peccheours fist preyer al Rei qil li grantast

And if anyone remains in the sanctuary beyond the quarantine he shall be debarred from the favour of abjuration. If this is by his default, then after that term none may find him sustenance; and albeit such people are out of the peace and faith of the king, nevertheless none may disturb them so long as they are in the protection of the Church, provided that they be not found out of the road with intent to violate their oath or are doing some other wrong on the road.

If the person slain be unknown, then in such case it belongs to the coroners to enter a *murdrum* on their rolls, according to the statute of King Knut, made on setting out for Denmark, who, for the preservation of his Danes whom he left in England, ordained that whenever an unknown man was slain all the hundred should be in the mercy of the king under a judgment of *murdrum*.[1] Four things relieve from the judgment of *murdrum*: the first if the felon be known or the person killed; for if the felon be known then he can be attainted for the felony. The second, if the felon be taken or has fled to a church. The third, if the killing were not felonious but by misadventure. The fourth, where a man is *felo de se*. Since of a man who is known no *murdrum* can be committed, it is the duty of the coroner in these felonies to inquire into the lineage of such persons who are killed, so that one may know from their kinsmen whether they were of English birth. For if one does not know the name of any of their kinsmen, the presumption will be that they were aliens, and it is for this reason that this kinship is called Englishry, whether such kinship be found on the side of the father or of the mother. If no Englishry be thus found the judgment will be *murdrum*.

To the office of coroner it belongs also to receive the confessions of felons in the hearing of witnesses. Thus it happened in a great felony committed by several sinners in the days of King John, that one of them prayed the king

[1] This seems to come from Bracton, folio 134 b, who took it from the so-called Leges Edwardi Confessoris.

la vie *par* si qil en atteinsist les autres peccheours q*e* furent ces cumpaignouns, e li Roi lotria. E a la requeste le Roi g*r*aunterent les contes q*e* en son tens soulement remeint cel usage pur lei, q*e* peccheours conuz de felonies pussent autres excuser,[1] e ordene fu donq*e* q*e* coroners p*r*issent tieux confessions e tieux appealx a une foiz e ne mie p*ar* plusours.

A tieux apealx fere ne sunt mie femnes recevables, nenfanz de deinz lage de xxj. an, ne fous nastres, ne meseaux apertz, ne p*r*ofez en ordre de religion, ne clers, nenditez ou appelez de crim einz ces qil eient gehis[2] de eus mesmes, ne atteinz de faus appel, ne vencus de bataille pur felonie, ne nul aragie.

Les appelez sont p*er*nables cors e biens solom ceo[3] q*e* avant est dist.

E si ascun forein soit appele de p*r*ovour q*e* soit hors del poer le corouner le comissaire le Rei le face parer en jugement ou utlaguer.

Ch. XIV. De la Place del Escheqere.

Lescheqere est une place quarree q*e* soulement est ordene pur le pru le Roi, ou ij. chevalers e ij. clers ou ij. hom*n*es l*ett*res sunt assignez, pur oir e terminer les torz fetez au Roi e a sa coroune endreit ses fes e ses franchises, e les acountes des baillifs e de ces recevours des deners le Roi, e des administrours de ces biens, p*ar* la veuue de un soverein qest tresorer dengleterre.

Les ij. chevalers soleient estre appelez ij. barons pur affoerer les am*er*ciementz des countes, e des barouns, e de tenaunz counties e baronies si q*e* nul ne fust affoere forq*e* p*ar* ces piers.

En cele place estoit assigne j. seale j. gardien pur fere ent aquitaunce de chescun paiement q*e* avoir la voleit, e de

[1] Corr. *encuser*.
[2] *gehis* interpolated.
[3] The old edition gives at this point some sentences which really belong to a subsequent chapter, and which were therefore printed twice over. This was the result of a copyist's error.

that he would grant him his life provided he attainted the other sinners who were his companions, and the king granted this to him. And at the request of the king the earls granted that during his life, but no longer, this usage should remain for law, that sinners confessing their felonies should be able to accuse others; and it was then ordained that coroners should take such confessions and such appeals once, and once only.

To make such appeals women are not receivable, nor infants under twenty-one years of age, nor idiots, nor open lepers, nor persons professed in religious orders, nor clerks, nor those indicted or appealed for crime before they have confessed themselves, nor those attainted for false appeals, nor those vanquished in battle for felony, nor any madman. The bodies and goods of those appealed are to be taken, as we have said above. If any foreigner [1] be appealed by an approver who is out of the jurisdiction of the coroner, the king's commissary is to make him appear in court or outlaw him.

Ch. XIV. Of the Place of the Exchequer.

The Exchequer is a square place which is established solely for the king's profit, where two knights and two clerks, or two literate men, are assigned to hear and determine wrongs done to the king and his crown in respect of his fees and franchises, and also the accounts of his bailiffs and the receivers of the king's revenues and administrators of his goods, under the supervision of a chief who is treasurer of England.

The two knights are commonly called barons for the purpose of affeering the amercements of earls, barons, and of those holding counties and baronies, so that no one may be affeered save by his peers.

To this place was assigned a seal and a keeper to make acquittance for every payment to anyone who wished to

[1] A man of another county is a foreigner, and probably the sheriff is the king's 'commissary.'

sealer les brefs e les estretes souz cire vert, issaunt de cele place por le prou le Roi.

En la place sont aussi chamberleyns e plusours autres ministres qe ne touche mie mout a la lei.

Ch. XV. Des Menues Cours.

Des assembles premers vindrent consistoires qe len appele ore cours. E ceo en divers lus e en divers maners. Dunt une curt tenent viscountes de mois en mois, ou de . v . someins en v. solom les grandours e les largesces de paiis. E celez courz sunt appellez countiez ou les jugemenz se funt par les sieuters si bref ne isoit. E ceo est par garant de jurediccion ordenaire.

Autres menues cours sunt qe les baillifs le Roi tenent en chescun hundred de iij. someins en iij. par les siutiers des fieu tenaunz des hundrez.

Autres menues courtz sunt es courtz de chescun seignur de fieu al foer des courz hundredz, e aussi en feires e marchez ou covendra hastier droit sanz delai, le quel qe les bosoignes touchent les auctours ou les defendanz solom les primers ordenaunces. En qeles courz unt conussances de dettes, covenanz e enfreinz, e en trespaz, e tieux autres peti pecchiez qe ne passent mie xl. sous ne la value. E aussi e eles[1] conoisaunce de trespas e forfeture des fieus par entre les seignurs pleintifs e lur tenaunz defendaunz ou le revers.

Trestuz les tenaunz de denz les fieus sunt obliges a celes siutes fere, e ne mie par servage des persones, mes par servage des fieus ; mes femmes, enfanz de dienz lage de xxj. an, sourz e muz, fornastres,[2] ceaux qe sunt enditez ou appelez de felonie mortele avant due aquitaunce, apertz meseaux e escomengez sunt exempz de celes siutes fere. E soit qe tieux fieu tenanz poent fere teles siutes as menues

[1] *Sic.* [2] Corr. *fous nastres.*

have it, and to seal writs and the estreats under green wax which issue from this place for the king's profit.

In this place also are chamberlains and several other officers who have not much to do with the law.

Ch. XV. Of Inferior Courts.

Those primitive assemblies [1] were the origin of the consistories which we now call courts. And these exist in various places, and are of various kinds. Of these one court is held by the sheriffs from month to month, or from five weeks to five weeks, according to the size of the districts. These courts are called counties, and in them the judgments are made by the suitors if there be no writ.[2] This is by warrant of the jurisdictio ordinaria.

Other inferior courts are those which the king's bailiffs hold in each hundred every three weeks with the suitors of the fee tenants of the hundreds. Other inferior courts are the courts of each lord of a fee held in the likeness of hundred courts, and those in fairs and markets, where, according to the primitive ordinances, justice should be speeded without delay, whether the business concerns the plaintiffs or the defendants. Such courts take cognisance of debts, covenants broken, trespasses, and such other petty sins which do not exceed forty shillings or its value. And likewise have they cognisance of trespasses, and the forfeiture of fees between the lords who are plaintiffs and tenants who are defendants, and *vice versa*.

All tenants within the fees are obliged to make suit [to these courts], by reason not of the servitude of their persons, but of the servitude of their fees; but women, infants under twenty-one years of age, deaf mutes, idiots, those indicted or appealed for mortal felony before due acquittal, open lepers, and excommunicates are exempt from doing such suit. And albeit such fee tenants can do their suits at

[1] See above, p. 8.

[2] If the county court is hearing a cause begun by writ, the sheriff is judge.

courz *par* lour atturnez, *par* atturnee neqedent nest jammes jugement rendable ne tenable pur ferm.

E si ascum plee soit menue *par* le bref le Roi en teles courtz, sicom de droit, de justicies, de replegiari, de naifte, ou dautre nature, cil en ad la jurisdiccioun a qi le bref est maunde *p*rincipalment ou *par* retours.

Ch. XVI. De Torns.

Les viscountes daunciene ordenaunce tenent assembles generales ij. fois *par* an en chescun hundred ove touz les fieus tenanz dedenz le hundred sunt obligez de venir *par* le *ser*vage de lur fieus, cest assavoir une foiz ap*res* la Seinte Michel e autre foiz ap*res* Paskes.

E pur ceo q*e* les viscountes a ceo fere font lur tourns de hundred, sunt teles venues appelez tourns de viscountes, ou a viscountes appent denquere de touz peccheours *per*soneles e de totes *cir*cumstaunces de pecchez fez en ceaux hundrez, e de torz des ministres le Roi e la Royne e de torz fetz au Roi e al comun del poeple, solom les pointz avantdis es devisions de pecchez.

Trestuz feu tenaunz es hundrez ne sunt mie ore tenuz avener a tieux tourns, car li Roi Henri le tierz en allegea ascuns *per*sones, e dist q*e* as tourns des visc*on*tes nestoit mees q*e* erseveqes, abbez, p*ri*ours, countez, barrons, gentz de Religion ne malades ne autres q*e* sont exempz de siutes fere, as menues courtz veignent en *pro*pres p*er*sones si lur p*re*sence ne isoit necessaire pur autre chose q*e* pur la veuue fere. E si ascun eit div*er*ses tenementz en divers hundrees sa p*re*sence ne soit point[1] ne neqedent le gre le Roi.

[1] Some omission is to be suspected.

inferior courts by their attorneys, yet judgment by attorney can never be given nor held as binding.

And if in these courts any plea be moved by the king's writ, *e.g.* writ of right, of justicies, of replevin, of naifty, or of any other kind, he to whom the writ is sent immediately or by way of return has the jurisdiction.

Ch. XVI. Of Turns.

The sheriffs by ancient ordinance hold general assemblies twice a year in each hundred, whither all fee tenants within the hundred are obliged to come by service of their fees, to wit, once after the feast of St. Michael, once after Easter.

And because the sheriffs in order to do this make turns through the hundreds, these visits are called the sheriff's turns, where it is the sheriff's duty to inquire as to all personal sinners and into all the circumstances relating to sins committed in such hundreds, and into wrongs done by the officers of the king and queen, and into wrongs done to the king and the commonalty of the people according to the aforesaid distinctions in our division of sins.

All the fee tenants in the hundred are not now bound to come to such turns, for King Henry the Third relieved certain persons, and declared that archbishops, abbots, priors, earls, barons, men of religion, and sick folk, and others who are exempt from doing suit to inferior courts need not come in their own persons unless their presence is necessary for some other purpose than the making of the view. And if anyone have divers tenements in divers hundreds his presence is not required unless the king demands it.[1]

[1] Some words have been omitted. Our author has been stating the effect of the Statute of Marlborough cap. 10, which ends thus: 'Et si qui in hundredis diversis habeant tenementa, non habeant necesse venire ad huiusmodi turnos nisi in ballivis ubi fuerint conversantes.'

Ch. XVII. De la Veuue des Francs Pleges.

De celes assembles primers estoit aussi ordene· qe chescun hundreder feit comun assemble une foiz par an e ne mie soulement de fieu tenaunz mes de tuz del hundred estraunges e dinzeins de xij. ans ensus, forpris ercevesqes, evesqes, abbes, priours, e totes genz de religioun, e tuz clers, countes, barrouns, e chevalers, femme espouses, sourz e muz, malades, foxnastres e meseaux e ceux qe sunt aillors en disseisnie[1] pur enquere des poinz avantditz e des articles siuaunz. E ne mie par serfs ne par femmes, mes par les serementz de xij. francz homnes al meins, car serf ne poet nule franc homme enditer, ne nul autre qi nest recevable a siute fere en menues courtz.

E pur ceo qe ordene fu aunciement qe nul ne demoerast en Reaume sil ne fist[2] en diseine e plevi de franc·homme apent as hundreders de veoir une foiz par an les francz pleges e· les pleviz e pur ceo sunt teles veuues appelez veuues de franc pleges.

Les articles sunt ceaux :—vos dirrez par vos serementz si trestuz soient venues·qe cea deivent venir a la jornee. Si tuz francz del hundred ou del fieu isoient presenz. Si les francz pleges i eient lur doseins enters, e tuz ceaux qil unt pleinz. Si trestuz ceaux del hundred ou del fieu de xij. ans en sus eient jure feaute au Roi, e de recettors des autres a escient. De tut sanc peccherousement espandu. De hu e cri levee a tort, ou a droit levie e nient sui duement, e des nouns de ceaux qi neient corruerent.[3] De tuz mortiels peccheours en totes especes com des principaus e des accessoires. De tuz exules, utlaguez, weives, e baniz retornez, e qi les unt puis recettez. E de ceaux qi unt este condempnez a la mort, ou forjures le Reaume. De cristiens usurers e de tuz lur biens. De tresor trovie. De wrek, weif, estrai e de chescun porprise e occupacion fet sur le Rei ou sur sa dignetie. De chescun tort fet par ces ministres le Rei e par

[1] Corr. *diseine.* [2] Corr. *fust.* [3] Or perhaps *cornerent.*

Ch. XVII. Of the View of Frankpledge.

By these first assemblies it was likewise ordained that each hundredor should cause to assemble together once a year not only the fee tenants, but all men of his hundred, strangers as well as denizens of twelve years of age and above, except archbishops, bishops, abbots, priors, and all men of religion, all clerks, earls, barons, knights, married women, deaf mutes, sick folk, idiots and lepers, and those who are in tithing elsewhere, in order to inquire into the aforesaid matters and the following articles. And the inquiry must be made not by serfs nor women, but by the oaths of twelve free men at least, for a serf cannot indict any free man, nor can any who is not receivable to make suit in the inferior courts.

And because it was anciently ordained that no one should remain in the realm if he was not in tithing and plevied by free men, it is the hundredor's duty to view once a year the frankpledges and plevies, and for this reason such views are known as views of frankpledge.

The articles are these: You shall say by your oaths if all those are come who are bound to come to this session, if all free men of the hundred or fee are there present, if the frankpledges have their dozens complete, and if all that they have are full. If all those of the hundred or fee of twelve years and upwards have sworn fealty to the king, and what persons have knowingly received those who have not done so. Of all blood sinfully shed. Of hue and cry wrongfully levied, or rightfully levied and not duly pursued, and of the names of those who did not run to it. Of all mortal sinners of all kinds, both principals and accessories. Of all persons exiled, outlawed, waived or banished, who have returned, and of those by whom they have then been received. Of those who have been condemned to death, or have abjured the realm. Of Christian usurers and of all their goods. Of treasure trove, of wreck, waif, stray, and every purpresture or occupation made against the king or his dignity. Of every wrong done by the officers of the king

autres al comun del poeple, e des *pur*prestures fetes en lu comun en *ter*re ou en euue ou aillurs. Des bondes remues a comun nusaunce. De chescun assise enfreinte de pain, *cer*voise, vin, dras, pois, mesures, trones, busseaux, galons, alnes, e tolhepes, e de totes fauses balances e qi les unt useez, e qi unt achatie *par* une manere de pois e de mesures e vendu *par* autre manere en fraude des marchanz. Des destourbeors de fornissementz des loiax jugementz, e de forjurours [1] de torcenous e des assessours e consentaunz. De chescun torcenous detenue de cors de hom*m*e ou dautre naam. De chescun faus jugement done pur [2] lautre veuue el hundred ou el fieu. De chescun forstal fet el chemin comun. De tuz torcenouse vez. De totes torcenouses recousses. De chescun out*rai*ouse destresce ou en autri fieu, ou en marche pur forein contract. De tutz pontz rompus. De chaucees e de chemins connus brises e qi les doit refere. De adobbours de veuz dras demoranz hors des *gran*tz viles en lus defenduz. Des tannours e blanchours de quirs e des mainoverours. Des bochiers e queus vendaunz char susseme *pur* seine e gascrue pur bien quite. De ceux qi vendent vin poeri pur sein, e cervoise crue ou rousse ou de fenes ou de cineraie pur covenable e seine. De menus larcins. Des cillours [3] de bourses. De ceaux q*e* les soeffr*ent* user eur mestier pur loiers. Des p*er*nours de thefbote. Des fesours e hantours de faus dez. Des out*rai*ours tolneours. De touz trecheors e decevours. De tuz manners conspiratours e de tuz autres articles q*e* valoir iporrunt a pecchie destrure.

Les p*re*sentemenz sunt sealables de seals des jurours si q*e* une ne i puisse fere fraude dencrestre ou damenuser. E ceo q*e* ne porra p*ar* ceaux p*re*sentemenz estre illoec redresce est p*re*sentable al p*ri*mer tourn de viscounte; e ceo q*e* les visco*n*tes ne purrent redrescer est p*re*sentable p*ar* les viscountes al escheqer.

[1] Corr. *fournissour.* [2] Corr. *puis.* [3] Corr. *cissours.*

or others to the community of the people, and of purprestures done on common land or water or elsewhere. Of boundaries removed to the common nuisance. Of the breach of any assize of bread, beer, wine, cloths, weights, measures, trones, bushels, gallons, ells, toll-dishes. Of all false balances and those who have used them. Of those who have bought by one weight or measure and sold by another in fraud of the merchants. Of those who disturb the execution of lawful judgments, and of those who execute tortious judgments or take part therein as assessors or consenting parties. Of every wrongful detention of the body of a man, or other naam. Of every false judgment given since the last view in the hundred or fee. Of every forestalment done in the public highway. Of every tortious *vee*. Of every tortious rescue. Of every outrageous distress made in the fee of another, or in a market for a foreign contract.[1] Of all bridges broken. Of public paths and ways that are broken and who ought to repair them. Of redubbers of old clothes who dwell in forbidden places outside the great towns. Of tanners and bleachers of leather, and hand workers. Of butchers and cooks who sell measly flesh for sound, and half raw for well cooked. Of those who sell corrupt wine for sound, and beer hard or reddened or made of oats or of flea-bane for wholesome and sound. Of petty thefts, of cutpurses, of those who for reward permit them to carry on their business. Of those who take thefbote, and those who make or use false dice. Of those who take outrageous tolls. Of all those working treachery and deceit. Of all manner of conspirators, and all other articles which may avail for the destruction of sin.

The presentments should be sealed with the seals of the jurors, so that none may fraudulently increase or diminish them. And all matters that cannot be there redressed by these presentments must be presented at the first turn of the sheriff; and what the sheriffs cannot redress they must present at the Exchequer.

[1] A contract not made in that market.

Trestuz ceaux sur queles mortel pecchie est *pre*sente e baniz retourne e lur recettours e ceux q*e* ne sunt mie a la fei le Rei sunt *per*nables e lur biens en la main le Rei.

E tut isoit q*e* li baillifs ne puet oir ne *ter*miner nulli accion a la jornee, si ascun nequedent *pre*sent se sente greve par ascun torcenous *pre*sentement e senpleigne, ou si li baillif eit suspeceon q*e* les jurours soient en autre cas *par*jurs *par* con*ce*lement dascun pecchie *pre*sentable ou de ascun peccheour, bien list al baillifs *par* xij plus vaillans enquere ent la verite sanz delai. E tut seit qe les derreins jurours dient q*e* les *pri*mers soient *par*jurs por ceo neq*e*dent q*e* nul tesmoign ou jurour nest atteignable de meins q*e* de ij jurours e pur ceo q*e* la derreine juree nest mie pris forq*e* del office le baillif e ne mie en man*er*e datteinte, ne sunt mie les *pri*mers jurours tenables pur atteinz einz sunt simplem*ent* amerciables.

E si ascun se *pro*ffre de jurer feautie au Roi seit *pri*mes plevi de ascun *fra*nc plege e mis en disseisine[1] e puis jurge feaute au Roi, e pus li soit pecchie defendue e co*mun*e oveq*e* peccheours. E li soit enjoint qil soit obeissant a son chief plege.

De cest serement fere en celes veuues nest nul exempt q*e* soit del age de xij ans hom*me* ne femme, clerk ne lai, forp*ris* aliens passanz al foer del messager, ou de pelerin, ou marchaunt e ceaux qi sunt engarde.

A cestes venues de tourns e de veuues tient lu essoignes p*ar* les queles labsence de ceux q*e* ne purru*nt* estre excusable, en[2] teles essoines sunt ajornables as courtz p*ri*mers suanz q*e* les essoinours eient lur garantz.

[1] Corr. *diseine.* [2] Corr. *e.*

All those against whom mortal sin is presented, and those who have been banished and have returned, and their receivers, and those who are not in the king's faith are to be taken into the king's hand with their goods.

And albeit the bailiffs cannot hear or determine any action at that session, nevertheless if anyone present feels himself grieved by any tortious presentment and complains, or if the bailiff suspects that the jurors have perjured themselves in another case by concealing any presentable sin or sinner, it is lawful for the bailiffs by twelve more substantial men to inquire into the truth without delay. And although such last jurors say that the first were perjured, nevertheless because no witness or juror can be attainted by less than two jurors at least, and because this second jury is taken by the bailiff merely *ex officio* and not by way of attaint, the first jurors are not held to be attainted, but are merely amerciable. And if any of the people proffer himself to swear fealty to the king let him first be plevied by frankpledge and put in a tithing, and then let him swear fealty to the king, and then let sin and community of sinners be forbidden him, and let him be enjoined to obey his chief pledge.

From making this oath at these views no one is exempt who is of the age of twelve years, man nor woman, clerk nor lay, save aliens who are passing in the guise of messengers, pilgrims, or merchants, and those who are in ward.

At these visits, turns, or views essoins are allowed, by which the absence of those who cannot come is excused, and such essoins can be adjourned to the next ensuing courts, so that the essoiners may produce their warrantors.

LIBER II. [DE ACTIOUNS.]

Les chapitres del secunde livre.[1]

1. De actiouns.
2. De juges.
3. De actours.
4. De loiers.
5. De contours.
6. De attachemenz.
7. As queux action de appeller est done.
8. De proces del exigendes.
9. Des gaoles et gaolers.
10. De pleuissables.
11. [De lappel de majeste.]
12. [Lappel de faussonerie.]
13. [De appeals de traison.]
14. [Le appel de arsoun.]
15. [De lappel de homicide.]
16. [Les appeals de roberie et larcin.]
17. [De lappel de hamsokne.]
18. [Lappel demprisonment.]
19. [Lappel de mahim.]
20. [Lappels de plaie.]
21. [Lappel de rap.]
22. De pecchies criminales a la suite le Rei.
23. [De pecchez venials a la suite le Roi.]
24. [De pecches venials a personeles suites.]
25. De assises de novel disseisine e rediseisine.
26. Del ve de naam.

    De acounte.[2]
27. De contract.
28. De naifte.
29. Des sumonses.
30. Des assoines.
31. De attornez.

[1] The Table of Contents in the MS. does not contain the headings that are here printed within brackets.

[2] The little that our author has to say about Account comes at the end of his chapter on Contract.

BOOK II. OF ACTIONS.

The Chapters of the Second Book.

Of Actions.

2. Of Judges.
3. Of Plaintiffs.
4. Of Guerdons.
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LIBER II.

DE ACTIOUNS.

Ch. I. De Acciouns.

Quant est dist q*e* les Rois e les lais p*r*inces unt liguie-me*n*t [1] e les corections des peccheours en eide des p*r*elatz, e q*e* entant sunt il les vicaires dieu en t*er*re, e a ceo fere unt ju*r*ediction pur assoudre les peccheours p*ar* peines e nome-me*n*t ceaux peccheours q*e* sunt mis en lour subjectioun, mes les Rois ne poient mie nen deivent savver [2] autriz pecchiez nient notoires sanz actions de accusours, q*e* bien piert p*ar* lexample q*e* dieu monstra quant il fist [3] juge en consistoire e demaunda laccusour de la femme peccheresce. E pur ceo q*e* nul sei p*r*esenta contre la peccheresce e pur no*us* doner [4] p*er*petuel example q*e* dreit jugement ne se poet fere demeins de iij p*er*sones, de juge, de auctour e de defendour, dist dieux a cele femme qele sen alast sanz jour,[5] de si cum point napent a juge de sei p*r*esenter pur juge e pur p*ar*tie. E pur ceo fet a conoistre de actions, e queux sunt e estre purrent jugez, queux actours e queux defendours. Action nest autre chose q*e* loiale demaunde de son droit.[6] Et sunt iij maneres de actions, p*er*sonele, reale, e mixte, e unt introductions p*ar* brefs e p*ar* pleintes en manere q*e* suit.

[1] Corr. *le guiement.*

[2] For *sauver*, apparently in the sense of our *to salve.*

[3] Corr. *se fist.*

[4] *e pur nous doner*; these words are in another hand.

[5] *quod eat inde sine die*, the technical phrase by which an English court acquits a defendant; it tells him that his attendance is no longer required.

[6] Inst. 4, 6, pr.: 'Actio autem nihil aliud est quam ius persequendi iudicio quod sibi debetur.'

BOOK II.

OF ACTIONS.

Ch. I. Of Actions.

When we say that the kings and the lay princes have guidance and correction of sinners in aid of the prelates, and that so far they are God's vicars on earth, and for this purpose have jurisdiction to absolve sinners by penance, and especially those sinners who are in subjection to them; yet the kings neither can nor ought to take cognizance of the sins of others that are not notorious without actions brought by accusers, as well appears by the example God gave when he constituted himself judge in consistory, and called for the accuser of the woman who had sinned. And inasmuch as no man came forward against the sinner, and to give us a perpetual example that there can be no lawful judgment without three persons—judge, plaintiff, defendant—God told her to go without day, since it does not pertain to a judge to act as both judge and party. We must therefore study actions, who are and can be judges, who plaintiffs, and who defendants. An action is no other thing than a lawful claim of one's right. There are three kinds of actions, personal, real, and mixed, and they commence by writs and plaints in manner following.

Ch. II. De Juges.

Juges sunt q*e* unt jur*es*diction. Juges poent estre tuz ceaux a queux lei nel defent. As femmes defent droit q*e* eles ne seient juges, e de ceo est qe fem*m*es sunt exemptes de fere siutes en menues courtz. Dautrep*ar*t serfs ne pount estre juges, pur les ij estaz q*e* sunt repugnantz, ne atteinz de faus jugement ne poient mie estre juges, ne infames, ne nul demeins de age de xxj anz, ne meseals apertz, ne fous nastres, ne atturnez, continuelement arragez, ne sourz e muz, ne parties es plez, ne escomengez de evesq*e* ne hom*m*e cr*i*minal. Car dieu meismes quant il fu en t*er*re entra en consistoire ou une peccheresce devoit estre jugee a la mort, ou diez escrist en la t*er*re e dist a siuters qi la deivent juger 'Ki de vo*us* est sanz pecchie la doigne soun jugement,' en example de juges q*e* emp*er*nent a juger la gent chescu*n* jour, dunt il les apprent q*e* nule nempreigne si haute nobleie a seer en la chaiere dieu pur juger les peccheours taunt cum eux meismes sunt de pecchie condempnables. E ceaux qi ne sunt a la fei crestiene ne poent estre juges, ne ceaux q*e* ne sunt a la fei le Roi, ne ceaux qi nunt nule com*m*ission del Roi ne poent estre justices, ne aver juresdiction pur le Roi, ne nul q*e* poer est repelie, ne nul ap*r*es jugement rendu ne aprees son tort en mesme la cause. Example piert el brief de droit *Et nisi feceris vicecomes faciat.* Ne nul aprees la mort ou le reaume vient[1] de son garaunt si la cause neit este attame, ne nul q*e* garant est vicious, ne nul sanz soun aioint si soun poer nel voille.[2] Juge com*m*issaire nad poer de jug*er* forqe solom les poinz e dedenz les t*er*mes de sa commissioun e del bref original, nient plus q*e* li juge arbitre ad poer daler hors des poinz de sa co*m*promisse.

[1] Corr. *remuement.*

[2] These last words refer to a *Si non omnes* clause, permitting one justiee to proceed withouf his fellows.

Ch. II. Of Judges.

Judges are those who have jurisdiction. All save those forbidden by law can be judges. The law forbids women to act as judges, and hence it is that women are exempt from doing suit to the inferior courts. Again, serfs cannot be judges, for the status of serf and judge are repugnant, nor can those attainted for false judgment, infamous persons, those under the age of twenty-one, open lepers, idiots, attorneys, lunatics, deaf mutes, the parties to the plea, those excommunicated by a bishop, nor criminal persons. For God himself when on earth held a consistory wherein a woman who was a sinner was to be adjudged to death, and he wrote on the ground and said to the suitors whose duty it was to judge her, 'He of you who is without sin, let him give his judgment,' thus setting an example to judges who every day take upon themselves to judge folk, and teaching them that none should take upon himself so high an office as to sit in God's seat to judge sinners when he himself is tainted with sin. Those who are not of the Christian faith cannot be judges, nor those who are not in allegiance to the king; and those who hold no commission from him cannot be justices, or have jurisdiction for the king, nor he whose power has been withdrawn, nor anyone after judgment given or after his own wrongdoing in the same cause, as is shown in the writ of right, '*Et nisi feceris vicecomes faciat*;' nor anyone after the death or removal of his warrantor if the cause has not already been begun, nor anyone whose authority is faulty, nor anyone without his colleague unless his commission authorises this. A judge commissary has only the power to judge according to the articles and within the terms of his commission and of the original writ, just as the judex arbitrarius has no authority to go outside the articles of the submission to arbitration.

Ch. III. [*De Actours.*][1]

Queux poent estre actours. Actours sunt qi siuent lur droit ou lautri p*ar* pleintis. Accuser ou pleindre poent tuz ceux a queux lei ne defent. Accuser ne poent mie, meseals, ne fous nastres sanz gardeins, nenfanz dedenz age sa*n*z gardeins, ne hom*m*e cr*i*minal, ne utlaguie, exille, bani, ou femme weive, ne serf sanz soun possessour, ne femme marie sanz soun mari, ne gent de religioun sanz lur gardeins, ne escom*en*gez, ne sourz ne mutz sanz lur gardeins, ne juges es cas ou il sunt jugez, ne nul q*e* nen est a la foi le Roi pur[2] quei il ert est[3] plus de xl. jours el reaume, forp*r*is pr*o*vours as queux est suffert daccuser cr*i*minalment gentz de sa condicioun pur favour de la pees.

Coment loials hom*m*es deivent pleindre. Il deivent amiablement amonester les peccheours, cest a entendre lur trespassours, qil se amendent vers eux, e sil ne voillent e la cause soit criminale, distinctez—car si ascun quert vengeaunce adunq*e* apent dattamer sa accion p*ar* appele de felonie, e sil quert amende des damages adunq*e* appent dattamer laccion p*ar* bref q*e* contigne le noun le Roi e de partiex e les nouns del juge e del countie e la pleinte ou la demaunde si les damages ou la demaundie passe xl s*ous*. E si noun adunq*e* suffist pleinte sanz bref. E pur ceo q*e* tuz pecchez ne sassoillent mie par p*er*soneles[4] siutes des pleintifs p*ar* quoi les Rois ne se p*ou*nt mie sentire deschargez nettement p*ar* autries siutes, soleient les Rois errer de contie en contie de vij. ans en vij. anz pur enquere des pecchiez e des trespas as[5] peccheours, e de torz fez a eux e a la coroune, e al comu*n* del poeple, e de torz, errours, negligences de lur ministres, e de tuz fauz jugem*en*tz, des peines p*ar*donees ou a tort juges ou outraiouses, des utlaguez retournez e de lur recettours, des values des countiez, hon*ur*s, hundrez, villes, manoirs, e biens noun moebles q*e* as Rois e a la coroune appendent, des terres

[1] Supplied from the Table of Contents.
[2] Corr. *puis*.
[3] Corr. *este*.
[4] *persone les*, MS.
[5] Corr. *des*.

Ch. III. Of Plaintiffs.

Who may be plaintiffs. Plaintiffs are those who seek their own right or another's by plaints. All save those forbidden by law can bring accusations and plaints. The following cannot accuse: lepers, idiots without guardians, children under age without guardians, criminals, outlaws, exiles, banished men, women who are waived, serfs without their owners, married women without their husbands, men of religion without their guardians, excommunicated persons, deaf mutes without their guardians, judges in causes in which they are judges, those who are not in allegiance to the king after that they have been in the realm more than forty days, save approvers, who are allowed to criminally accuse folk of their own condition in favour of the peace.

How lawful men should make plaint. They should in love admonish the sinners, *i.e.* their trespassers, to make amends to them, and if they will not, and the cause be criminal, then we must make this distinction :—If anyone seek vengeance then shall he commence his action by an appeal of felony, and if he seek compensation for damage then shall he commence his action by a writ containing the king's name, the names of the parties, the judge, the county, and the plaint or demand, if the damages or sum claimed exceed forty shillings ; if they do not, a plaint without writ suffices. And because all sins cannot be absolved by personal actions brought by plaintiffs, and thus the kings cannot feel themselves fully discharged by suits brought by others, they were wont to journey through the counties every seven years, to inquire concerning sins and trespasses of sinners, of wrongs done against them and their crown, and to the commonalty of the people, and of wrongs, errors, and negligences done by their ministers, of all false judgments, punishments pardoned or wrongfully or outrageously adjudged, of outlaws returned and their receivers, of the values of counties, honours, hundreds, towns, manors, of immoveables belonging to the king and the crown, of lands

a fous nastres, des alienacions des fieus, des offenses a comuns inhibicions des Rois, des privileges e franchises prejudiciels as Rois, des chaucees ponz e chemins brisez, e de tuz autres articles necessaires. E soleient fere droit a tuz par eux ou par lur chief justicier. E ore les funt les Rois par lur justices commissaires erranz assignez a tuz ples. En eide de celes eires sunt tourns des viscountes necessaires e veuues des francs pleges. E quanqe bones gentz a teles enquestes enditerent de pecchie mortel soloient les Rois destrure sanz responz, les queux usages durent uncore en alamaine. Mes par garaunt de pite e de merci, e pur ceo qe la fresletie de homme ne sei poet tenir de pecchie si abstinence neit de la grace de dieu, acorde est qe nul appele ne endite soit destrut sanz responz, e ceo [1] qe les Rois ne eient siutes forqe des pecchiez mortieux, e de droitz de la coroune, e de lur droiz demeine, de torz de lur ministres, e de torz fetz countre comun droit e communes ordenaunces pur comun prov, e des articles des eires.

Ch. IV. Des Loiers.

Les Rois soloient doner gareison a chief de vij anz a tuz ceux qe par taunt de tens les avereient lealment servi, e de guerdons des Rois pristrent autres example de rendre services [2] a lur serjantes. E pur ceo qe nul ne poet franc home enservir countre soun gre par unt nul nestoit servir Rei nautre forqe pur le servage de soun fieu ou pur la reseantise e la demoere en autri fieu, sunt ascuns louuez a servir le Roi pur certein par an. E a ceaux ministres qe pernent lur sertein [3] del Roi ne list rien a prendre de nul del people, mes a ceaux juges qi servent le Roi en esperaunce de bien fet list bien a prendre xij deners del actour a la jornee ou sieurte einz ceux [4] qe li actour eit audience, e nient plus tut isoient il ij. juges ou ij. pleintifs ou [5] une accion. E

[1] Omit *ceo* (?). [2] Corr. *guerdons*. [3] Corr. *certein*. [4] Corr. *eco*. [5] Corr. *en*.

belonging to idiots, of the alienation of fees, of offences against the common inhibitions of the king, of privileges and franchises prejudicial to the king, of paths, bridges, and roads broken, and all other necessary articles. And they were wont to do right to all men by themselves or by their chief justices, but now the kings do this by their justices commissary in eyre assigned to hold all manner of pleas. In aid of these eyres, turns of sheriffs and views of frankpledge are necessary. And those whom the good folk in these inquests indicted of mortal sin the kings used to destroy without [hearing an] answer; and this usage still prevails in Almain. But through pity and mercy, and because the frailty of man cannot abstain from sin unless it be by the grace of God, it was accorded that a person appealed or indicted should not be destroyed without giving an answer, and that the kings should not make suit save for mortal sins, the rights of the crown, their desmesne rights, wrongs done by their officers, and wrongs done against common right and common ordinances made for the common advantage, and lastly the articles of the eires.

Ch. IV. Of Guerdons.

The kings were wont to give a reward every seven years to all those who for that time had loyally served them; and others took example from the kings to give rewards to their servants, and since no man can enslave a free man against his will, so that no one was bound to serve the king or any other man against his will, save by reason of services due from his fee, or by reason of his residence and dwelling in the fee of another, certain persons are hired to serve the king at a certain amount by the year. And it is not lawful for these officers who have a fixed sum from the king to take anything from any man; but those judges who serve the king in hope of advancement may well take from the plaintiff twelve pence for the day or security for the same before the plaintiff can have audience, but not more, though there be two judges or two plaintiffs in one

al countour vj d., et chivaler tesmoin jurour vj d., e autre jurour iiij d. e les ij somenours iiij d. El tens nequedent le Roi Henri le premer estoit ordene e *communement* assentu q*e* jurours en enquestes e jurees doffice cu*m* es petites assises, de reconoissaunces, reddisseisines, c*er*tefica-cions, atteintes et teles autres ne p*rei*ssent nient de loiers, pur ceo q*e* eles se funt aussi co*m* de office le Roi. E de ceux deners rendre sunt les defendaunz chargeables entre [1] les damages sil cheent en jugement. E a ceux q*e* suirent le p*ro*fit le Roi e ne furent mie ses ministres dona le Roi primer Henri le vintime del p*ro*fite estre [2] lur renables mises. En meme la maner fet a denier audience al actour sil ne troesse seurte a sa adv*er*sete p*ar*tie de rendre li ses damages sil se pleint de li atort.

Ch. V. Des Countours.

Plusours sunt q*e* ne sevent lur causes p*ro*nu*n*cier ne defendre en jugement, e plusours q*e* ne pount, e pur ceo sunt countours necessaires, si q*e* ceo q*e* pleintifs e autres ne pount ou ne sevent p*ar* eus facent p*ar* lur serjantz ou p*ro*curatours ou amis. Countours sunt s*er*jauntz sachanz la lei del Reaume qi s*er*vent al comun del poeple a pronuncier e defendre les actions en jugeme*n*t p*ur* ceux qi mester en unt pur loer. A chescun countour pur autri bosoignes covend*ra* aver regard en iiij choses qil eit p*er*sone recevable en jugement, qil ne seit herege, nescomenge, ne crimjnal, ne hom*m*e de religioun ne femme, ne dedenz seinz ordre de sudeacone en amont, ne clerk benefice de cur*e* des almes, ne demeins de xxj an, ne juge en mesme la cause, ne mesel apert, ne atteint de faussine co*n*tre le droit

[1] Corr. *oustre* (?)

[2] Corr. *oustre* (?)

action.[1] The pleader may have six pence, and a knight being witness or juror six pence, any other juror four pence, and the two summonors four pence. In the time of King Henry the First nevertheless it was ordained and commonly assented that jurors in inquests, and juries of office, as in the petty assizes, recognitions, redisseisins, certifications, attaints, and the like, should not take reward, since these inquests are made as it were by the king ex officio. And the defendants are bound to repay this money in addition to the damages if they fail in their action. And to those who sue for the profit of the king and who are not his officers King Henry the First granted the twentieth part of the profit besides their reasonable expenses. And in like manner audience is to be denied to the plaintiff if he do not find security to the opposite party to restore to him his damage, in case the plaint be wrongful.

Ch. V. Of Pleaders.

Some there be who know not how to state their causes or to defend them in court, and some who cannot, and therefore are pleaders necessary; so that what plaintiffs and others cannot or know not how to do by themselves they may do by their serjeants, proctors, or friends. Pleaders are serjeants wise in the law of the realm who serve the commonalty of the people, stating and defending for hire actions in court for those who have need of them. Every pleader who acts in the business of another should have regard to four things:—First, that he be a person receivable in court, that he be no heretic, nor excommunicate, nor criminal, nor man of religion, nor woman, nor ordained clerk above the order of subdeacon, nor beneficed clerk with the cure of souls, nor infant under twenty-one years of age, nor judge in the same cause, nor open leper, nor man attainted of falsification against the law of his office.

[1] A distinction is drawn between the judges who receive fixed salaries and those who are serving, *e.g.* as justices of assize, in hope of advancement. It is believed that a great deal of judicial work was done by commissioners who received no salaries.

de son office. Lautre chose est q*e* chescun countour est chargeable p*ar* se*r*ement qil ne meintendra ne defendra tort ne faussine a soun escient, einz guerpera son client quel oure qil puisse soun tort apercevoir. La terce chose est q*e* il ne mettra james ava*n*t en court faus delais ne faus tesmoins, ne meura ne profera ne as corrupciouns deceites menceonges ne as fauses leis ne consentira, einz loialment meintendra le droit de soun client si q*e* il ne chece p*ar* folie negligence ne defaute de li ne de resoun qe a li apendroit de p*ro*nu*n*cier. E p*ar*[1] mestierie le denger despiser[1] coup folie tenesoun manace noise ne viloigne ne desturberai juge p*ar*tie se*r*jaunt ne autre en court p*ar* quei il desturbe droit ou audience. La quarte est salaire en tour quei iiij choses sunt aregarder, la quantite de la cause, le t*ra*vail del serjaunt, la value del contour com de soun[2] de facunde e donur e lusage de la court. Contour est suspendable qu*a*nt il est atteint de salaire resceu de ij adversaires en une cause, e sil face ou die al juge chargeant despit, e sil chiece en nul des poinz avantdiz estre[3] les excepciouns q*e* sunt a la p*er*sone le countour, car nul ne poet estre countour qi ne purra estre accusour ou actour.

Ch. VI. De Attachementz.

Personeles accions p*er*nent introductions par attachementz des cors, reales par somonses, e mixtes primes p*ar* somonses e p*us* p*ar* attachementz. Endreit de mortieux peccheours voet dreit qil neient mie taunt de mitigacion ne favour qil seient amonstez ne somonez ne destreinz de p*ar*er en jugement, pernables en lur oevres si lur pecchiez soient notoires ou si tost cum len purra. E si ascun se defut adunq*e* solom la constitucion de Wincestre fet a siure a hu e a cri de corne e de bouche, issi q*e* touz ceux de une ville

[1] These words seem to be corrupt: we leave them untranslated.
[2] Supply *savoir* (?)
[3] *ouster*. 1642.
[4] Some words seem to be missing.

Secondly, that every pleader is bound by oath that he will not knowingly maintain or defend wrong or falsehood, but will abandon his client immediately that he perceives his wrongdoing. Thirdly, that he will never have recourse to false delays or false witnesses, and never allege, proffer, or consent to any corruption, deceit, lie, or falsified law, but loyally will maintain the right of his client, so that he may not fail through his folly, or negligence, nor by default of him, nor by default of any argument that he could urge; and that he will not by blow, contumely, brawl, threat, noise, or villain conduct disturb any judge, party, serjeant, or other in court, nor impede the hearing or the course of justice. Fourthly, there is the salary, concerning which four points must be regarded—the amount of the matter in dispute, the labour of the serjeant, his value as a pleader in respect of his [learning,] eloquence, and repute, and lastly the usage of the court. A pleader is to be suspended if he is attainted of receiving a fee from both sides in one cause, or if he says or does anything in contempt of the judge, or if he fails in any of the points above mentioned concerning the exceptions which may be taken to the person of the pleader, for none may be a pleader who cannot be an accuser or plaintiff.

Ch. VI. Of Attachments.

Personal actions are commenced by attachment of the body, real by summons, and mixed first by summons and then by attachment. As to mortal sinners, the law wills no such mitigation or favour as that they shall be admonished, summoned, or distrained to appear in court, but they are to be taken in their crimes if they be notorious, or as soon afterwards as may be. And if anyone flee, then, according to the statute of Winchester,[1] the hue and cry must be pursued with horn and mouth, so that all those of one

[1] Stat. Winchester, cap. 1.

qe poissanz soient de courre les pursuient [1] jesqes a lautre ville proscheine. E si ascun soit atteint seit occis, a [2] aussi sil se court a defense sil ne pusse autrement estre pris. Autrement nequedent est en felonies nient notoires, li pecheour nient notoire ne funt mie a occire sanz lur respons si lem les pousse prendre vif. E si ascun se vodra pleindre pur vengeance avoir ou pur chacer peccheour a savvacion de alme, voist al corouner de lu ou li pecchie se fist, e monstre sa pleinte en la fourme qil la voudra prover. E li corouner destinctement la face enrouller, e li pleintif se face escrire cum homicide pur la voluntie corrumpue de occire son proene par sa pleinte si qe il le [3] jugement talion sil ne pusse atteindre de prover sa pleinte. Al proschein countie apres soun appel enroulle apent a tieux pleintifs de reciter lur apeals e trovier pleges de siure, ou remeindre en prison tanqe il enseient meinpris. E as meinpernours sunt tieux pleintifs liverables par corouners, cors pur cors, qil suierent lur appealx e de les aver avant en court pur receivre droit quant il serent demaundez sil natteignent a lur appealx prover.

Les personeux pecchiez sunt ces : les mortieux pecchies, enprisonement, mahaim, plaie, baterie, perjurie, usure, emport de veux tresor trovie, de wrek, de weif, e de estrai, recousses, forstalles, brusure dautri parcs, resistence de fornissemenz de loiaux jugemenz, execucions de faus jugemenz, torcenouses peccheries e tieux [4] autres pecchiez personels venals. Les attachementz des peccheors mortieux sunt par les cors saunz plevine, e les attachementz des peccheours venials personels sunt aussi par les cors mes aplevine. Les reals pecches sunt ceux sur queux ces brefs sunt foundez de dreit, de cosinage, de doeire, de avoesson del eglise, deentre, de escheate, de quo jure, de fourme de doun, e de tuz autres feodals. Les pecchiez mixtes sunt ceux sur queux ces brefs sunt foundez de custumes e de services, de naifte, de covenaunt, de homage vee,[5] descriz rendre, de fin fete, de meeson,[6] ou dautre

[1] *que puissent, sont a currer les pursuivants.* 1642.
[2] Corr. *e.*
[3] Corr. *leit.*
[4] *tous autres peschés sont* (Houard).
[5] Or *nee.*
[6] Corr. *mesne.* The action *de medio.*

township, who are capable of following the cry, shall make pursuit to the next township. And if the fugitive be caught let him be killed, so also if he defends himself and cannot otherwise be taken. Otherwise is it in the case of felonies which are not notorious, for there the sinner, if he can be taken alive, is not to be killed without being heard to answer. And if anyone desires to complain for the sake of vengeance, or in order to drive a sinner to the salvation of his soul, let him go to the coroner of the place where the sin was done, and show his plaint in the form in which he will prove it. And the coroner shall cause it to be distinctly enrolled, and the plaintiff will thus write himself down as a homicide, because of his corrupt desire to slay his neighbour by his plaint, so that he will be judged by the *lex talionis* if he cannot prove his plaint. At the next county court after his appeal has been enrolled the plaintiff must recite his appeal and find pledges to prosecute or remain in prison until he be mainprised. And such plaintiffs may be delivered by the coroners to mainpernors, body for body, who will undertake that the appeals shall be pursued, and that the plaintiffs shall be produced in court to receive judgment whenever they be demanded, if they do not succeed in proving their appeals.

The personal sins are these: the mortal sins, imprisonment, mayhem, wounding, battery, perjury, usury, asportation of old treasure trove, or of wreck, waif, or stray, rescue, forestalment, pound breach, resistance to the execution of lawful judgments, execution of false judgments, tortious fishing, and such other venial personal sins. Attachments for mortal sins are by the body without plevin; attachments for venial personal sins are also by the body, but with plevin. The 'real' sins are those upon which are founded writs of right, of cosinage, of dower, of advowson, of entry, of escheat, of *quo iure*, of formedon, and all other feudal writs. The 'mixed' sins are those upon which are founded the writs of customs and services, of naifty, of covenant, for homage denied, for detenue of charters, *de fine facto*, of mesne, or for other acquittance, *de sectis*

aquitaunce, de siutes fere, de deste e tieux autres; e *pur* la medlure des introductions sunt les actions appelez mixtes.

Ch. VII. As queux Action Dappeler est done.

Action dappeler nest mie done ouelement a tuz, mes al actioun de traîson est receivable chescun a qi traison est fete forp*ris* ceaux q*e* ne sunt recevables en nule actioun. Al appel de arsoun est chescun recevable a qi le damage e le p*ropriete* de la chose arse estoit. Al appeal de homicide soleient tuz parentz tuz affins e tuz alliez recevables, mes lapel del espouse al occis est recevable devaunt tuz autres. E ne mie de totes les espouses, mes de cel soulement en qi braz qest ataunt adire cu*m* en qi seisine il esteit occis, car sil eit eu plusours fem*m*es espouses, e totes furent en pleine vie en le tens de sa occisio*n*, cele nequedent est recevable devant totes les autres qe il dereinem*en*t tint cum pur sa femme, tut ne fut ele sa femme de droit, e ceo est por ceo q*e* a la lei court napent nient detrier quele fu sa femme de fet e quele de droit, e les appealx de touz autres s*unt* suspendables pendaunt lappel recevable. Apres lespouse est appel de filz einzne legitime al occis recevable devant tuz autres. Legitime est dist, car bastard nest mie a coun*ter* p*ar* entre fiz car lei counte celi pur fiz q*e* esposailles le demonstrerent. Apres lappel del fiz einzne solent lappel de lautre p*ro*schein del sanc apres li recevable et issi de degre en degre par droite ligne de cosinage descendant; e si li sanc defailli en cele ligne adunq*e* furent recevables ceus de lignes collat*er*als, ou les affins ou sanc failli solu*m* les degrez de figures de consanguinite e daffinite, e p*r*incipalment en la ligne dever le pere. Mes lapees[1] de homicide fu restreint p*ar* le Rei Henri le premer jesqes es quatre proscheines degrez el sank.[2] E si ascun dedienz lage de xxj. an appele, li defendaunt ne lestovera ja de respoundre a si haûte actioun einz ceo qil eit passe cel age, e pur ceo sunt tieux appealx

[1] Corr. *lappel*.

[2] We find no trace of any such legislation.

faciendis, of debt and the like; and these actions are called mixed because of the mixture in the introductory process.

Ch. VII. Of those who have an Action by Way of Appeal.

The action by way of appeal is not given equally to all men; but to an action of treason anyone may be received to whom the treason is done, save those who can be received to no action. To an appeal of arson everyone may be received who was damaged and had the property in the thing burnt. To the appeal of homicide all persons connected by consanguinity, affinity, or alliance are wont to be received; but the appeal of the wife of the slain is receivable before all others. This, however, is not so with all wives, but only of her in whose arms, *i.e.* in whose seisin, he was slain, for if he had several wives and all of them were alive at the time of his death, the appeal of her whom he last held as his wife is receivable before all the others, albeit she was not his wife *de iure*; and this is because the lay court cannot try the question which was his wife *de facto* and which *de iure*; and the appeals of all the others are suspended pending the appeal which is receivable.

The appeal of the eldest legitimate son is receivable next after that of the wife. 'Legitimate,' we say, for a bastard is not to be accounted as a son, for the law accounts as a son him *quem nuptiae demonstrant*. Then after the appeal of the eldest son, the appeal of him who stands next in proximity of blood is receivable, and so from grade to grade down the straight descending line of consanguinity; and if the blood fails in that line, then the collaterals, or those connected by affinity, blood failing, were admissible, according to their places in the tables of consanguinity and affinity, and in the first place those in the paternal line, but the appeal of homicide was restrained by king Henry the First within the four nearest degrees of blood. And if anyone under the age of twenty-one years appeals, the defendant need not answer him in so high an action until he has passed that age; and therefore these appeals are to be

suspendables jesqes ataunt qe audeus[1] les parties soient de plener age, si le noun age soit allegge en jugement en fourme de excepcioun.

Appeller pount hommes e femmes, clers e lais, enfanz e autres de quele condicion qil soient, forpris ceaux qe ne sunt mie recevables en actions. E tut soit qe plusours appellent . j . soul nequedent est recevable a la continuance, e cel pendant sunt autriz suspendables, e en tuz cas sunt les appealx vers les accessoires suspendables pendant lappel ver le principal j. ou plusors.

Ch. VIII. Le Proces de Exigende.

Al primer countie nappent nient plus a fere al corouner forqe de entrer les pleges qe proprement sunt meinpernours e de comaunder qe lempreigne les appelez e tutes lur possessions e lur biens en la main le Roi solont ceo qe avant est dit. E sil soient pris soient gardez jesqes a due deliveraunce, e sil ne soient trovez e lactour veigne a lautre countie e recite soun appel ou ses appeals, adunqe sunt tieux appellez soulement demaundables e triables[2] par lur nouns, e lur nouns dunt il sunt plus conus come une foiz demaundez qil viegnent a la pees le Roi. Car si ascun soit appelie cum le fiz soun pere e eit autre surnoun conu par taunt est lappel vicious e par conseqent abatable al peril del actour. Al tierce countie en meisme la manere com par deuz foiz demaunde, e al quart countie cum par iij. foiz demaunde, al quel countie si les appellez ne se presentent en jugement nen soient pris a main de les aver avant al proschein countie soit jugement rendu sur lur contumace par les corouners, e ceux qi parrunt avant jugement rendu soient meintenaunt liveres a la gaole ou il leient[3] receuz saunz difficulte de fins ou de preiere.[4]

[1] Corr. *ambideus.*
[2] Corr. *criables.*
[3] Corr. *seient* (?)
[4] *ou de payer*, Houard.

suspended until both parties are of full age, if the nonage be alleged in court by way of exception.

Appeals can be brought by men and women, clerks and lay, infants and others, of whatever condition they be, save those who cannot be received in any action. And if several make an appeal, one only is to be received to continue it, and pending his appeal the others are to be suspended; and in every case appeals against the accessories are to be suspended pending the appeal against the principal or principals.

Ch. VIII. Of the Process of Exigent.

At the first county court the coroner has only to enter the names of the pledges who in strictness are mainpernors, and to command that the appellees be taken, they and all their possessions and goods, into the hand of the king, as aforesaid. And if they be taken let them be kept in ward until they be duly delivered; and if they be not found and the plaintiff comes to the second county court and recites his appeal or appeals, then demand and cry is to be made for the appellees by their names, or the names by which they are best known, that they do come in to the king's peace as having been exacted a first time. For if any be appealed merely as the son of his father, and has some other known surname, then the appeal is vicious and can be abated to the plaintiff's peril.[1] At the third county court the same is done, and this is the second exaction; and at the fourth county court comes the third exaction; and if on this occasion the appellees do not appear in court, and no one has undertaken to produce them, then at the next court let judgment be given against them as contumacious by the coroners; and if they appear before a judgment given, then let them be at once delivered to gaol, where they are to be received without any difficulty as to fine or petition.[2]

[1] It will not do to appeal a man as *Henry le fiz Roger* if he be better known as *Henry de Weston*.

[2] Translation doubtful.

Ch. IX. De Gaole e des Gaolers.

Gaole nest autre chose q*e* comun p*ri*soun. E si com lepre est une maladie revillaunt cors de hom*m*e taunt q*e* il nest mie suffrable a demoerer entre senz genz, aussi est pecche mortel une manere de lepre q*e* fet lalme abhominable a deu e la del p*ar*t[1] del com*m*un de totes seinz gentz. E pur quoi les innocens ne soient mie entochez de lur pecchez ordenes fure*n*t gaoles en tuz countiez pur mettre einz mortiels pecheors dattendre illoec lur jugementz es cas ou li peccheour fussent nie*n*t notoires. Deuz maneres sunt de prisoun, com*m*une e p*ri*vee. Chescune comun p*ri*son est gaole e nul nad garde for le Roi. Prison privee est autri p*ri*son dunt chescun list deschaper q*e* fere le poet, savve qil ne face autre trespas en leschape. En comun p*ri*son nest nul emp*ri*sonable forq*e*. pur pecche mortiel e de ceo fu defendu p*ar* le Roi Henri le tierce q*e* nul ne levast deners pur nul eschap en la terre le Roi einz ces[2] q*e* leschap fu juge en eire des justices le quele peine p*e*cuniele ou corporele fust agardable ou noun. E pur ceo q*e* defendu est q*e* nul soit pene avant jugement, voet droit q*e* nul ne soit mis entre v*er*mine nen puriosie nen lu o*r*rible ne p*er*illoutz nen euue nen oscurete nen autre peine, einz list ben a gaolers defirger ceaux dunt il se doute, sauve q*e* les fierges ne poissent mie plus de xij unces, e de efforcer lagard a ceux qi sunt[3] en la gaole violence, outrage ou trespaz.

Ch. X. Des Plevisables.

Ascuns appellez de mortel pecchiez sunt q*e* tut ne soient il meinp*er*nables de droit, p*ar* abusion neqedent est suffert qil sunt liverables p*ar* bail einz ceux qil viegnent en la gaole, nomeement les appellez de homicidie, robberie, larcin e

[1] *et la doit parter*, Houard. [2] Corr. *ceo*. [3] Corr. *funt*.

Ch. IX. Of Gaol and Gaolers.

A gaol is nothing else than a common prison. And as leprosy is a malady which disgraces the body of a man so that he may not be suffered to dwell among healthy folk, so mortal sin is a kind of leprosy which makes the soul abominable to God and severs it from the community of all holy folk. And in order that the innocent may not be tainted with their sins, gaols were ordained in all the counties, so that mortal sinners might be put therein to await their judgments, in case their sins were not notorious. There be two kinds of prison, common and private.

Every common prison is a gaol, and only the king has the keeping of it. Every other man's prison is private, and from this anyone may escape who can, provided he do no other trespass in his escape. None is to be imprisoned in a common prison save for mortal sin, and it was forbidden by King Henry the Third [1] that anyone should levy in the king's land any money for any escape before the escape had been adjudged by justices in eyre, and a decision given as to whether any punishment, corporal or pecuniary, was to be awarded or not. And because it is forbidden that anyone be tormented before judgment the law wills that no one be placed among vermin or putrefaction, or in any horrible or dangerous place, or in the water, or in the dark, or any other torment; but it is lawful for gaolers to put fetters upon those whom they suspect (of trying to escape); but the fetters must not weigh more than twelve ounces; and they may keep in stricter ward those who are guilty of violence, outrage, or trespass in the gaol.

Ch. X. Of those who are Plevisable.

Some there are appealed of mortal crime who, albeit by law they are not mainpernable, are nevertheless—though this is an abuse—deliverable on bail before that they have been brought to gaol; to wit, those appealed of homicide,

[1] No, but by Stat. West. I. c. 3.

homsokne, ou hors de la gaole en cas ou li Roi troeve par enqueste qe il sunt appellez a tort, e pur tieu cas fu li bref trovie de odio et atia. Ceux qi sount condempnez a corporele peyne, ne sunt mie plevisables ne metables a meinprise einz ces[1] qil ensoient alleggez par fin de peyne peccuniele.

Ch. XI. De Lappel de Majeste.

Des crimes de Majeste ne de faussonerie ne de rien qe touche le droit le Roi ne surt nul appeal mes accions ou enditemenz.[2] Par esclaundres de sodomie nassentirent unqes nos aunciens peres qe len les monstrast en manere daccions par accusementz nenditemenz ne nule manere de audience nassentirent destre done pur la grant abhominacion del pecchie, einz ordenerent qe es pecchez notoires saunz respit fuissent jugez e les jugemenz forniz e en nient notoires pecchez sen teust chescune langue.

De la machinacioun en la mort le Roi e des autres especes de majeste ver le Roi terrien se funt accusementz mes ne mie enditemenz, car chescun feal le Roi qe ensoit se deit hastier pur fere en la monstrance au Roi si qe il ne soit pris ne repris pur sa longe demoere e trop de targe.[3] En queus cas les encusez sunt pernables e en plein parlement die laccusour par li ou par serjaunt solom ceo qe monstre fu en cel cas en le tens le Roi Edmund en cestes paroles—Rocelin, ici, dist Walegist illoec, qe a tiel jour tiel an del regne de tiel Roi, en tiel leu, vient celi Walegist a cesti Rocelin e li trova[4] de estre en conseil e en eide ensemblement ovesqes Atheling, Thurkild, Balbard e autres, de fere poison ou entouche pur occire nostre seignur le Roi Edmund, ou en autre manere par coup felonessement, e a ceo fere furent entre jurez a ceo counseil conceler e a ceo felonie issi fornir solom lur poer.

[1] Corr. *ceo.*
[2] No stop in MS.
[3] Corr. *tarde.*
[4] This word seems wrong.

robbery, larceny, and hamsoken, or are deliverable out of gaol, as in the case where the king finds by inquest that they are wrongfully appealed, and for this purpose the writ *de odio et atia* was invented. Those who have been condemned to corporal punishment are not plevisable or mainpernable until they have returned to the law by making a pecuniary fine.

Ch. XI. Of the Appeal of Laesa Majestas.

For the crime of laesa majestas or for falsification or for anything which touches the king's right there is no appeal, but there are actions or indictments. Because of the scandal of sodomy our ancient fathers would not suffer that there should be any actions, accusations, indictments, or audience of any kind concerning so abominable a sin, but ordained that those notoriously guilty should be judged without respite and the judgments executed, and in cases that were not notorious every tongue should hold its peace.

As to compassing the king's death and other kinds of laesa majestas against the earthly king, there are accusations, but no indictments, for every one of the king's lieges who knows thereof should hasten to show it to the king, so that he may incur no reproof by reason of his inaction or delay. And in these cases the accused are to be arrested; and then in full parliament let the accuser by himself or his serjeant follow this precedent of the time of King Edmund and say, 'Rocelin, who is here, says that Walegist, who is there, for that on such a day, in such a year, in the reign of such a king, in such a place, came the said Walegist to the said Rocelin and urged him to be in council and aid along with Atheling, Thurkild, Balbard, and others in making poison or drug to kill our lord the king Edmund, or otherwise, by a blow feloniously, and to do this were they sworn, and to conceal this counsel and to execute this felony to the best of their power.'

Ch. XII. Lappel de Faussonerie.

Cest pecchie en fet nient notoire se monstre *par* faus bref ou *par* faus monoie trovie en ascun possession. E tut soit q*e* iij. p*er*sones soient necessaires en jugement en cest cas neqedent dist Ordmar [1] qe possessours de mauveistie sunt doffice de juge chaceables a respoundre del title de lur possession q*e* nen est mie en tuz cas. E si ascun soit q*e* nel voille dire en jugement, adunq*e* iert retornable a la gaole e trestuz ces biens p*er*nables en la mein le Rei e recevables, sicom en totes c*ri*minals accions attamez *par* appeals ou *par* enditemenz ; mes en venials acciouns soloient tieux contumax estre condempnez *par* non respons aussi bien cum *par* lur respounz e lealment atteinz. E si ascun die qil y avint bien loialm*ent* e ne seit *par* qi, ne nul ne se profre countre li de p*ro*ver laffirmative del accioun, adunq*e* appent al possessour a p*ro*ver laffirmative de soun responz. E si ascun die qil avint *par* c*er*teine homne seit cum apres jert dit.

Ch. XIII. De Apeals de Traison.

Traison se monstre *par* appeals en ceste manere solom ceo q*e* fu trove en vieus roulles del tens le Roi Alfred—Bardulf, ici, appele Dorling, illoec, de ceo q*e* cu*m* meisme celi Dorling estoit lallie cesti Bardulf, vint cesti Dorling tel jour tel an e c*et.* e la femme cesti Bardulf durant lalliaunce porruist, ou soun seal faussea, ou tiel autre mauveiste fist. Ou issi—Hakon son pere ou soun autre p*ar*ent ou seignur ou lallie celi Dorling occist. Ou issi—demoera en eide ou en counseil ovesq*es* Saffrei ladv*er*saire cesti Bardulf, en plee q*e* toucha p*er*te de vie ou de menbre ou de t*er*rien honur. Ou issi—soun counsail ou sa confession descovr*i*. Ou issi—p*ar* la ou ili devoit av*er* loial enroullement dendreit de tiel plee, meismes celi Derling fausement enroülla a sa desheriteson

[1] *est ordeigne* (1642 and Houard).

Ch. XII. The Appeal of Falsification.

This sin in a case that is not notorious is demonstrated by a false writing or false money found in anyone's possession. And albeit that three persons are necessary for a judgment, nevertheless in this case Ordmar said that the possessors of a fraud may be compelled by the judge *ex officio* to answer as to the title of their possession, but this is not so in all cases. And if anyone there be who will not make answer in court to this question, let him be returned to gaol and let all his goods be taken into the king's hand, as in the case of criminal actions begun by appeal or indictment; but in venial actions the contumacious are usually condemned for want of answer, as though they had answered and had been lawfully convicted. And if any answer that he came by the [fraudulent writing or money] lawfully, but does not know from whom he got it, and no one offers to prove against him the affirmation of the action, then the possessor must prove his answer affirmatively. And if he says that he had the thing from some certain person, then the case proceeds, as will be said below.

Ch. XIII. Of Appeals of Treason.

Treason is declared by appeals in this manner, as is found in old rolls of the time of King Alfred: Bardulf, who is here, appeals Dorling, who is there, for that whereas this Dorling was the ally of this Bardulf, came this Dorling on such a day in such a year, etc., during the alliance, and defiled the wife of this Bardulf, or falsified his seal, or did such other wickedness. Or thus: This Dorling killed Hakon, his father, or other kinsman, or lord or ally. Or thus: was in aid or counsel with Saffrei, the adversary of this Bardulf, in a plea which concerned life or member or earthly worship. Or thus: disclosed his counsel or confession. Or thus: Whereas he ought to have made a lawful enrolment of such a plea, this Dorling made a false enrolment to his disherison

ou autrement a son damage. Ou issi—par la ou illi mist en soun lieu en tele parole par devaunt tieux juges pur gaigner ou pur perdre e li dust aver fet loialte, la perdi il par sa defaute, ou par sa folie, ou negligence, ou collusion, ou rendi la demande ou tiel autre mauveiste li fist. Ou issi —par la ou il dist[1] aver accuse[2] ou essoneie tiel jour ecet, la li lessa il perdrei del possession ou tiel autre chose par sa defaute. Ou issi—par la ou il dust loialment pronuncie pur li en tiel cas, e com mesme celi Dorling malement li counsela ou pur li pronuncia en tiel point. E puis issi:—cele traison li fist celi Dorling felonessement cum feloun, e traiterousement come traitre; e si len voille dedire prest est cesti Bardulf del prover sur li par soun cors, ou sicom homme mahaigne, ou a femme, ou a clerk appent de prover. E tut soit qe quis seit a ascuns qe nestovereit a nul actour a monstrer la proeve de sa action einz ceo qele fust dedete de sa partie adversie, pur haster droit neqedent est cele usage suffert sicome en cest cas siuaunt e en autres. Soit qe ascun viscounte ou autre mette sus a autre homme plegeage ou meinprise, e cil le dedie, al actour appent a dire qe a tort le dedist, e pur ceo a tort, car en tiel an, tel jour, e cum devaunt tel e tiel, devient le plege tiel de soun gre e a ceo prover ad siute e deresne. Pur hastier droit est suffert qe lactour die en la monstraunce de sa pleinte issi— e sil le dedie e cet—car en tele manere se haste droit plus qe suffrir primes le respons de la partie adverse e puis descendre a cel proffre par replicacion.

Ch. XIV: Le Appel de Arsoun.

Les appeals darsouns se funt en tele manere—Cede, ici, appelle Harding, illoec, ovesqe les surnouns, de ceo qe cum meme cesti Cede avoit une meeson ou plusours, ou j. tas de

[1] Corr. *duist.* [2] Corr. *excuse.*

or otherwise to his damage. Or thus: Whereas Dorling was Bardulf's attorney in a certain cause to gain or lose before certain judges, and should have acted loyally, he lost the cause by his default, folly, negligence, or collusion, or surrendered the thing in demand, or did such other wickedness. Or thus: whereas he ought to have excused him or essoined him on such a day, etc., he allowed him to lose possession or the like by his default. Or thus: whereas he ought by law to have pronounced for him in such a case, he pronounced for him badly or gave him bad counsel on such a point.[1] And then at the end:—This treason did the said Dorling feloniously as a felon, traitorously as a traitor; if he will deny it this Bardulf is ready to prove it by his body—or as a maimed man, or as a woman, or as a clerk should prove. And albeit some think that no plaintiff is bound to show the proof of his action before a denial has been given by his opponent, nevertheless that right may be speeded this usage is suffered in the following case and in others. Suppose that a sheriff or other person surmises against a man that he is a pledge or mainpernor, and this is denied, then the plaintiff must say that the denial is wrongful, for that in such a year, on such a day, before so and so, the defendant became a pledge of his own free will, and of this the plaintiff offers suit and deraignment. But for the sake of expedition the plaintiff is allowed to put in his count the clause *And if he will deny it, etc.*, for in this way justice may be done more speedily than if the defendant gave his answer and then the plaintiff offered his proof by way of replication.[2]

Ch. XIV. The Appeal of Arson.

An appeal of arson is made in this manner: Cede, who is here, appeals Harding, who is there (add the surnames), for that whereas this Cede had a house or several houses, a

[1] Probably this refers to a pleader who fails in his duty of speaking (pronouncing) for his client.

[2] Our author is explaining the last clause of the common form of count, which seems to anticipate the defendant's answer, and so transgress the order of logic.

ble, ou un moillon defein,[1] ou autre manere des biens en tiel lu, ou issi—*par* la ou Weland pere ou *par*ent cesti Cede estoit en tiel lu tel jour ec*et*, la vient celi Harding e en la dite meeson mist le fieu & le dist Weland art laenz le quel qil en morust ou noun. Ceste arson li fist celi Harding felonessement e c*et*.

Ch. XV. De lappel de Homicidie.

Del pecchie de homicide sunt les appeals tieles. Knotting, ici, appelle Carling, illoec, de ceo q*e* cum Cadi pere, frere, fiz, ou uncle cesti Knotting estoit en la pees dieu e la pees nostre seignur le Roi en tiel lu, la vient mesme celi Carling e le dit Cadi tel jour, tel an, ec*et* de une espie, ou dautre man*er*e nomee brocha p*ar* mi le cors ou tiel plaie li enfist en tiel endroit del cors, dunt il estoit plus prees de la mort e plus loinz de la vie ; ceste occision li fist il en assaut p*ur*pense felounessement ec*et*. Ou issi—de une hache, ou coignee, ou de pere,[2] ou de baston le dit Cadi feri en la test ou aillours, de quel coup il morust tiel jour tel lu etc*et*. Ou issi—p*ar* la ou mesme celi Cadi estoit feru en tiel endroite del cors de coup curable, ou tieu malon ou autre blesceure curable avoit, dunt il se mist en la cure cesti Carling, qi se dist estre mestre mire de p*ra*ctike, la vient cesti Carling e la gareison le dit Cadi emprist, e p*ar* sa folie, negligence ec*et*, tiel jour ec*et*, felonessement le occist. Ou issi—li sustret sa sustenaunce, p*ar* quei tel jour ec*et* li occist. Ou issi—taunt delaia sa deliv*er*aunce a fere p*ar* quei il le tua. Ou issi—le pendi e felonessement loccist. Ou issi—comaunda ou envoia ou fu en leide ou en la force ou recetta. Ou faussement jugea Raghenild, q*e* prim*er*m*en*t atteint les xij. faus jurours tesmoins qi pendirent Godrun soun mari atort par xxiv. jurours, q*e* pus p*ar* divers appeals pendi le prim*er*s xij. jurours. Ou issi—tant li pena pur fere

[1] *ou molin, ou fein*, Houard.

[2] Corr. *piere*.

stack of corn, or rick of hay, or other goods in such a place; or thus: whereas Weland the father, or kinsman of this Cede, was in such a place on such a day, etc., came this Harding and set fire to the said house and burnt the said Weland therein, so that he died or otherwise. This arson did the said Harding feloniously, etc.

Ch. XV. The Appeal of Homicide.

Touching the sin of homicide, appeals are made thus: Knotting, who is here, appeals Carling, who is there, for that whereas Cadi, the father (brother, son, or uncle) of this Knotting was in the peace of God and in the peace of our lord the king in such a place, there came the said Carling and on such a day in such a year, etc., with a sword (or in some other specified manner) pierced him through the body (or gave him such a wound in such a part of his body), whereby he was nearer to death and further from life; and this slaying he did in premeditated assault, feloniously, etc. Or thus: With an axe, hatchet, or stone, or staff, struck the said Cadi on the head (or elsewhere), of which stroke he died, on such a day, at such a place, etc. Or thus: Whereas the said Cadi was struck on such a part of his body by a curable stroke (or had such a curable disease or wound), for the cure whereof he had placed himself under this Carling, who professed himself a master of medical practice, there came this Carling, and undertook the case, and by his folly and negligence, etc., feloniously slew him. Or thus: withdrew sustenance from him, whereby on such a day, etc., he slew him. Or thus: so long delayed his delivery [from prison] that thereby he slew him. Or thus: hanged and feloniously slew him. Or thus: commanded or procured [some one to slay him], or was in aid and force [at the slaying], or received [the slayers]. Or falsely judged Raghenild, who had in the first instance attainted by twenty-four jurors the twelve false jurors who wrongfully hanged her husband Godrun, and had then by divers appeals hanged the first twelve jurors.

li conoistre e de devenir provour, qil se conust fausement aver pecchie ou nient ne peccha, e li fist appeller innocenz de crim, si qe en Carling ne remist qe ceste Knotting ne fu jugee a la mort. Ou issi—par la ou cesti Knotting gist mahaigne countre lit, ou fu countrez, ou si joesnes, ou si veuz, ou si malades qe il ne poeit aler, la vient celi Carling e cesti Knotting porta ou caria de tiel lu tiel jour e cet. jesqes en tele euue, fossie, pus, marlere ou desert e illoec le geta, e issi lessa saunz eide e sustenaunce, si qe en li ne remist qe il ne fust illoec mort de feim e de disete. Cest mauueistie li fist il felounessement cum feloun e cet.

Ch. XVI. Les Apeals de Roberie e de Larcin.

Les apeals de robberie sunt tieux: Osmund, ici, apele Saxemund, illoec, de ceo qe cum cesti O. aveit un cheval de tiel pris, la vint celi Saxemund e del cheval li robba tiel jour ecet., ou de tant dargent, ou de tiel garnement de tiel pris, felonessement e cet., ou ses ij boefs de tiel pris ou dautre manere de chatieux de tiel pris e cet., ou les dits biens issi robbez recetta, ou fu en leide ou autrement consentaunt. De larcin issi—Athelwold, ici, apele Osketel, illoec, de ceo qe cum cesti A. aveit ces biens nomement e cet., e ceus biens larcenousement cum lierre li embla e cet. En cestes actions courrent ij droiz, le droit de la possessioun cum est de chose robbe ou emble hors de la possessioun celi qe rien nad el droit de la propriete, cum est de chose prestee, baillee ou lesee, e le droit de la propriete, com est de chose emblee ou robbe de la possessioun celi aqi la propriete de la chose est.

Or thus: tortured him into confessing and becoming an approver, so that he falsely confessed to have sinned where he had not sinned, and caused him to appeal innocent folk of a crime, so that it was not for want of will on Carling's part that Knotting was not adjudged to death. Or thus: Whereas this Knotting lay maimed in bed, or was so lame, or so young, or so old, or so sick, that he could not walk, there came this Carling and fetched or carried this Knotting from such a place on such a day etc., to such a pool, ditch, well, marl-pit, or desert place, and there threw him and left him without aid and sustenance, so that it was no fault of his [Carling's] that he [Knotting] did not die there of hunger and thirst. This wickedness did he feloniously as a felon, etc.

Ch. XVI. Appeals of Robbery and Larceny.

Appeals of robbery are made thus: Osmund, who is here, appeals Saxmund, who is there, for that whereas this Osmund had a horse of such a price, there came this Saxmund and robbed him of the horse on such a day, etc., or of so much money, or of such a garment of such a price, feloniously, etc., or of his two oxen of such a price, or of such other kind of chattels of such a price, etc., or received the said goods thus taken in robbery, or was aiding or otherwise consenting. Of larceny thus: Athelwold, who is here, appeals Osketel, who is there, for that, whereas this Athelwold had his goods, and in particular, etc., these goods he [Osketel] stole from him larcenously as a larcener, etc. In these actions two rights may be concerned—the right of possession, as is the case where a thing is robbed or stolen from the possession of one who had no right of property in it (for instance, where the thing has been lent, bailed or let); and the right of property, as is the case where a thing is stolen or robbed from the possession of one to whom the property in it belongs.

Ch. XVII. De lappel de Homsokne.

De homsokne sunt tieux appeals: Athulf, ici, apele Colgrum, illoec, de ceo, qe cum cesti A. estoit en tiel lu en la pees e cet., la vient celi C. soun dist oustiel a force e as armes assailli e en tiel droit[1] brisa, ou tel autre violence ifist felonessement e cet.

Ch. XVIII. Lappel demprisonnement.

E a lappel denprisonement ici:[2] Darling, ici, appelle Wloc, illoec, de ceo qe cum cesti cet., la vint ceste Wloc e le dist D. prist e de illoec le mena iesqes en tiel lu, ou il tel jour cet. le mist en ceps ou enfirgez, ou en autre peine, ou en encloustre de cel jour iesqes a tiel jour cet. Ou issi—e countre suffisaunte meinprise offerte pur li en cas plevisable retient, ou apres jugement rendu de sa deliverraunce—de tel houre iesqes a tiele. Ceste felonie li fist cet.

Ch. XIX. Lappel de Mahim.

De mahaim sunt tieux: Umberd, ici, apele Maimound, illoec, de ceo cum cet. la vint le dist M. currant de assaut prepense e de tele manere darme, le pie ou le poin le dit Umberd coupa, ou de j. tiel baston la summa en la teste dunt il li enfondra le tet de sa teste, ou de j. pierre li feri hors troiz denz devaunt dunt il li mahaima. Cest mahain li fist il felon e cet.

Ch. XX. Lappel de Plaie.

De plaie sunt tieux appeals: Briming, ici, appelle Olof, illoec, de ceo qe cum cet., de tiele arme li feri e nauffra en tel endroit del cors, dunt la plaie conteient taunt delaour taunt de longour e taunt de profundesce. Ceste plaie li fist il felon e cet.

[1] *endroit* (Houard). [2] Corr. *issi*.

Ch. XVII. Appeal of Hamsoken.

Of hamsoken, appeals are made thus: Athulf, who is here, appeals Colegrum, who is there, for that, whereas this Athulf was in such a place in the peace, etc., there came this Colegrum and assaulted his said house with force and arms, and broke it in such a place, or did therein such other violence feloniously.

Ch. XVIII. Appeal of Imprisonment.

An appeal of imprisonment thus: Darling, who is here, appeals Wloc, who is there, for that, whereas this [Darling], etc., there came this Wloc and took the said Darling and carried him to such a place, and there on such a day, etc., set him in stocks or in fetters, or in other torment, or in restraint from such a day to such a day, etc. Or thus: And detained him in spite of sufficient mainprise offered for him in a case that was replevisable, or after a judgment given for his delivery, from such an hour to such an hour. This felony did he, etc.

Ch. XIX. Appeal of Mayhem.

Of mayhem thus: Umberd, who is here, appeals Maimound, who is there, for that whereas, etc., there came this Maimound running in forethought assault and with such manner of arms cut off the foot or the hand of this Umberd, or with such a staff struck him on the head, so that he broke the crown of his head, or with a stone knocked out three of his front teeth so that he maimed him. This mayhem did he feloniously, etc.

Ch. XX. Appeal of Wounding.

Appeals of wounding are made thus: Briming, who is here, appeals Olof, who is there, for that, whereas, etc., with such an arm he struck and wounded him in such a part of his body, with a wound that was of such a width and of such a length and of such a depth. This wound he gave him feloniously, etc.

Ch. XXI. Appeal de Rap.

Appeal de rap se fet en ceste manere: Arnebourgh, ici, appele Athelin, illoec, de ceo q*e* cum ec*et.*, la vint celi Athelin e ceste Arne*bourgh* abati aforcea e purrust maugrie felon contre la pees. E pur ceo q*e* chescun rap ne soloit mie estre tenu pecche mortiel nestoit nule tiel appeal covenable si ele ne dust [1] e soun pucelage li toli.

Ch. XXII. Des Pecchiez criminals a la suite le Roi.

Plusours sunt qi point ne querent absolucion tut eient pecchie ver lur p*ro*eine mortelement. E por ceo q*e* le Roi est tenu de soun office achastier tieux a sauvacioun, soloient les Rois errer de vij. anz en vij. p*ar* touz paiis en soun Reaume por enquere solom ceo q*e* avant est.[2] Cestre [3] ceo en eide de celes eires furent corouners troviez, tourns de viscountes, veuues de f*ra*nc pleges e autres enquerours, pur enquere de tieux peccheours sicom dist est. Mes pur ceo q*e* ascuns sunt atort esclaundrez p*ar* quoi q*e* ne fet mie a crere mesdisaunz ne a la veine voiz del poeple, ordena le Rei Henri le premer q*e* nul ne fust pris nenp*ri*sonie pur esclaundre de pecchie mortel, einz ces [4] q*e* il en fust enditee p*ar* serement des p*ro*deshomes p*ar* devant tieux q*e* fuissent auctorizes de tieux enditemenz resceivre. E adunq*e* ap*ri*mes fussent p*er*nables, e cors e biens al foer des appellez e gardables en p*ri*soun tauntq*e* lur enfamie en fust purge p*ar* devant le Roi ou ces com*m*issaires.

Del crim de maiestie en nule especе ne sourt enditement forq*e* de heresie e de reneire, dunt si ascun ensoit enditee e soit mene en jugement, si ert lenditement p*ro*nun*c*iable pur le Roi p*ar* ascu*n* de soun poeple en ceste manere, solom ceo q*e* trovie est es vieuz roulles des Rois auncienes.

Je dis Sebourgh, illoec, est defame de bone gent del pecchie de heresie, pur ceo qele de mal art e creau*n*ce

[1] Corr. *dist.*
Corr. *Estre.*
[2] Supply *dist.*
[4] Corr. *ceo.*

Ch. XXI. Appeal of Rape.

An appeal of rape is made in this wise: Arnebourgh, who is here, appeals Athelin, who is there, for that, whereas, etc., there came this Athelin and knocked down, forced, and corrupted this Arnebourgh, against her will, feloniously, against the peace. And because it was not every rape that was accounted a mortal sin, such an appeal was not in due form unless she said, 'and took away her virginity.'

Ch. XXII. Of Criminal Sins at the Suit of the King.

There are who do not seek absolution, albeit they have sinned mortally against their neighbour. And for that the king is bound by his office to chasten them to salvation, the kings were wont to journey through all the lands of their realm every seven years to inquire in manner aforesaid. Also in aid of those eyres coroners were established, sheriffs' tourns, views of frank pledge, and other inquests, to inquire of such sinners, as has been said. But for that some were accused falsely and it is not right to put faith in slanders and the idle talk of the people, King Henry I. ordained that none should be taken or imprisoned on a charge of mortal sin until they were indicted by the oath of good men before those who were authorised to receive such indictments. And they in the first instance were to be taken, their bodies and goods, and imprisoned like appellees, and to be kept in prison until their evil repute should be purged before the king or his commissioners.

Of the crime of lèse-majesté no indictment arises, save for heresy and for renegation, whereof if any be indicted and be brought to judgment, the indictment may be proffered on behalf of the king by any one of his people in manner following, as is found in the old rolls of the ancient kings:

I say that Sebourgh, who is there, is defamed by good folk of the sin of heresy, for that she by evil art and for-

defendue, e par charmes e enchauntemenz toli a Brightiene sa voisine tel jour e cet., la flour de sa cervoise, par unt ele enperdi la vente, issi qe jugement ne se face de meins de iij. persones. Ou issi: Nolling, illoec, est defamie de bons giens qe atiel jour ecet., reneia il son baptesme e se fist circumcire e devient jeu, ou sarasin, ou adora ou sacrifia a Mahoumet en despit de dieu e en dampnacion de sa alme. Cest pecchie fest il felonnessement ecet. E pus issi en chescun cas semblable pur le Roi. E sil ne[1] voille dedire prest siu del prover sur li pur li Roi com appent al Roi de fere, cest assavoir al foer denfaunt de denz age. De faussonerie issi je dis pur le Roi qe Wymund, illoec, est defamie ecet., de ceo qil tiel jour ecet., fausa le seal le Roi ou sa monoie en tele espece ou tiele ecet.

De traisoun cessent ore enditemenz. De arsoun issi: je dis ecet., qe Seburgh, illoec, est defamee ecet., de ceo a tel jour ecet en tele meesoun ou biens mist le fu ecet. De homicide je dis ecet. de tiel arme feri Aiold en tiel endroit del cors, par quel coup il occist. Les degrez accessoires sunt monstrables apres les principals solom lur droit.

De larcin en ceste manere: jadis[2] qe Cutberd, illoec, est ecet., tiel homme, conu ou desconu robba de soun cheval ou dautre manere de bien e cet., ou larcenousement embla, ou al pecchie de tiel larroun conu, ou de larrons desconus fu assentaunt par prise de thefbote, qest reschat de larcin, qil prist a escient pur li soffrir a tele foiz passer, ou pur estoper sute, ou pur procurer a tort sa sauvacioun ecet.

[1] Corr. *le.* [2] Corr. *je dis.*

bidden miscreance, and by charms and enchantments, on such a day, etc., took from Brightwine her neighbour the flower of her ale, whereby she lost the sale of it, and in such case judgment shall not be given by less than three persons. Or thus: Nolling, who is there, is defamed by good folk for that on such a day, etc., he denied his baptism, and had himself circumcised and became a Jew, or a Saracen, or adored or sacrificed to Mahomet, in despite of God and to the damnation of his soul. This sin did he feloniously, etc. And so forth in every similar case for the king. And if he will deny it, ready am I to prove it against him on behalf of the king, as is proper in the king's case—that is to say, as one would do on behalf of an infant within age.[1] And of forgery thus: I say for the king that Wymund, who is there, is defamed, etc., for that on such a day, etc., he forged the seal or the money of the king in this wise or in that, etc.

Of treason there are no longer indictments. Of arson thus: I say, etc., that Seburgh, who is there, is defamed, etc., for that on such a day, etc., to such a house, or to such goods, she set fire, etc. Of homicide: I say, etc., that with such a weapon he struck Aiold on such a part of his body, by which stroke he slew him. The accessory degrees must be declared in their proper sequence after their principals.

Of larceny thus: I say that Cuthbert, who is there, etc., robbed such a man, known or unknown, of his horse or of other manner of goods, or larcenously stole them from him, or was assenting to the sin of such a thief whose name is known, or of such thieves whose names are unknown, by taking theftbote—that is to say, a ransom for the theft knowingly taken to allow the thief to pass on such and such an occasion, or to stop a prosecution, or wrongfully to procure his safety, etc.

[1] One of the author's favourite doctrines is 'Rex fungitur vice minoris.'

Ch. XXIII. Des Pechez personels a la suite le Roi.

Venial pecche se devise en ij. menbres; dunt lun sestent as *per*sones, e laut*re* al biens. Li pecchie venial q*e* sestent as p*er*sones est devisable en gros pecchiez, e en menuz. E tut soit q*e* li Roi eit conoissa*n*ce des pecchez toutz mat*er*ieux, labsolucion des gros pecchiez venials p*er*sonels retient le Roi a sa juresdictioun, e la conoissaunce des menuz relest il a touz fr*an*cs homes qi unt court sur lur mesnee. E Athelbrus dist touz ceux estre de sa meisnee q*e* furent resceaunz en so*n* fieu. E sur cele devision des pecchiez ad le Roi devisee sa pees issi q*e* tieux seignurages e baillifs eient le guiement de la pees es menuz pecchez.

Li pecche venial q*e* sestent as biens, est aussi devisable, et sestent lun menbre as biens moebles. Le p*ri*mer se fourche car de xl. s. ou de xl. soudees en aval se conoist chescun qi court tient, en annoi [1] taunt soul les Rois.

Les venials pecchez p*er*soneles sont ceaux:—p*er*jurie dunt len [2] est foi mentu ver le Roi, e p*er*jurie des nient ministres, les pecchez mórtels nent moustrez felounessement, enp*ri*sonement, mahaim, plaie, bat*er*ie moustrez saunz appeals, alienaccioun de veu tresor trovie, disseisine, reddisseisine, plusours autres.

Les demostraunces des p*er*sonels pecchez venials infamatoires sunt mostrables a la sieute le Roi en ceste manere: Je dis pur nostre seignur le Roi q*e* ci illoec est p*er*jurs e fei mentu ver le Roi, pur ceo q*e* p*ar* la ou mesme cesti si est ou esteit le chaunceler le Roi, e fu juree qil ne verroit,[3] venderoit, ne delaiereit droit ne bref remedial a nul pleintif, mesme cesti a tel jour ec*et.*, vea a tiel tiel bref datteinte, ou tel autre bref remedial, e meins ne li voloit gr*a*untier q*e* p*ur* d*emi* marc ec*et.* Ou issi—p*ar* la ou il fu soun juge assigne e fu juree a faire dreit ec*et.*, delaia droit en tiel manere ou en tiel, ou tel court sift [4] ou tel jugement, ou en tiel autre point de tele p*er*tes ou tele peine relessa, ou

[1] Corr. *amont.*
[2] Corr. *veeroit.*
[3] Corr. *lun*(?).
[4] Corr. *fist* (?). This passage is corrupt.

Ch. XXIII. Of Personal Sins at the King's Suit.

Venial sins are divided into two classes; the one extends to persons and the other to goods. Venial sins which extend to persons are divisible into gross sins and small sins. And albeit that the king has cognisance of all material sins, he retains the absolution of the gross venial personal sins for his own jurisdiction, while the cognisance of the smaller he leaves to all free men who have a court for their *mesnée*. And Æthelbirht said that all those men belonged to the mesnée who were resident in his fee. And over this class of sins the king has delegated his peace, so that lords and bailiffs have the control of the peace in case of the small sins.

Venial sins which extend to goods are likewise divisible; the one class of them extends to moveable goods, and has two branches, for up to forty shillings, or the worth of forty shillings, everyone who has a court has cognisance, but above that amount the king only.

Venial personal sins are these: perjury, where it consists in belying faith to the king, or is committed by one who is not the king's officer, and the mortal sins when they are not charged as felonies, such as imprisonment, mayhem, wounding and battery when they are charged otherwise than by way of appeal, and the alienation of old treasure trove, disseisin and redisseisin, and many others.

Charges of the venial personal sins which are infamatory may be made at the suit of the king in this wise: I say for our lord the king that such an one, who is there, is perjured and has belied his faith to the king, for that whereas he is, or was, the king's chancellor, and was sworn not to deny, sell, or delay justice or remedial writ to any plaintiff, he on such a day, etc., denied to such an one a writ of attaint, or such another remedial writ, and would not grant it to him for less than a half-mark, etc. Or thus: Whereas he was a judge appointed by the king, and was sworn to do right, etc., he delayed right in such or such a manner, or [gave a false judgment], or released such an one in such a matter from such damages or such punish-

tiele jurisdictioun porprist sur le Roi e se fist juge, ou corouner, viscounte, baillif, ou tel autre ministre le roi saunz garaunt. Ou issi—par la ou il fu chaunceller del eschecqer ecet., vea a tel afere acquitaunce de taunt qil avoit paie al eschecqer de la dette le Roi souz le seal del eschecqer, ou delaia de fere aquitaunce de tiel jour iesqes a tiel, ou ne volloit fere aquitaunce einz ceo qil achatast por taunt. Ou issi—de ceo qil tient del[1] plee countre le deffens le Roi e en prejudice de la dignete de sa coroune, de sicom a nul juge ecclesiastre nappent a nul plee seculer tenir forqe de testament e de matrimoigne, en prejudice del poer le Roi. Ou issi—destourba le fornissement de tiel jugement, ou sursist del fere par mauveise negligence ou consence. En ceste manere sunt les presentemenz mostrables a la sieute le Roi des personels torz de tuz ministres le Roi grandz e petiz, e ausi vers autres meint[2] ministres de touz tortz fetz au Roi par ceus qe li unt jure feautie.

Ch. XXIV. De Trespas venials a personels Soutes.

As ceaux qe unt actioun e ne vollent mie suire a vengeaunce socourt droit par pleintes des trespas pur recoverer damages. De trespas neqedent distinctez ou de trespas fet as persone de homme ou as chatieux. E si a la persone chescun ad actioun a qi le trespass est fet, forpris ceaux qe unt nule actioun sans lur gardein. E si as biens, destinctez si propres ou communs. Si propres distinctez si propres a homme ou propres a autre chose, sicom a la coroune ou a ascun eglise. Si a homme, distinctez si a homme franc de soi ou a homme engarde. Si a homme franc de sei il ad severale action. E si propres a autre chose engarde, al gardein appent lactioun qi qe unqes le

[1] Corr. *tiel.* [2] Corr. *nient.*

ment, or usurped such jurisdiction from the king and made himself judge, coroner, sheriff, bailiff, or other minister of the king without warrant. Or thus: Whereas he was chancellor of the exchequer, etc., he refused such an one an acquittance under the seal of the exchequer of a sum paid by him at the exchequer for a debt to the king, or delayed to give an acquittance from such a day to such a day, or would not give him an acquittance unless he would purchase it for so much. Or thus: For that he held such a plea contrary to the king's prohibition, and in prejudice of the dignity of the crown, whereas it belongs to no ecclesiastical judge to hold secular plea, if it be not concerning testament or matrimony, in prejudice of the king's power. Or thus: For that he disturbed the execution of such a judgment, or by wrongful negligence refrained from doing execution, or consented to the default. In such wise may charges be preferred at the king's suit for the personal torts of his ministers great and small, and also against all others who are not ministers for all torts done to the king by those who have sworn fealty to him.

Ch. XXIV. Of Venial Trespasses at the Suit of Private Persons.

Those who have actions and yet do not wish to sue for vengeance, law succours by plaints of trespass for the recovery of damages. As to trespass nevertheless, distinguish whether it be to a man's person or his chattels. And if to his person, then the person to whom the trespass is done has an action, save in the case of those who can bring no action without their guardians. And if to goods, then distinguish whether those goods are owned in severalty or in common. If in severalty, then distinguish whether the goods belong to a man or to another thing, as to the crown or to a church. If to a man, then distinguish whether to a man who is *sui juris* or to a man who is in ward. If to a man who is *sui juris*, then he has a several action. If the thing to which the trespass is done belongs to another

soit *par* successioun ou de conquest. Si a hom*me* engarde, al gardein appent la sieute ou al p*ro*schein ami parent affine ou lallie, el noun ou al oeps celi qest en garde. De com*m*uns biens ne tient lu nule sev*er*able actioun. E par ceo des biens as gentz de religioun appent laction al chief de la meesoun en soun noun pur li e pur son covent, ou el noun de celi qi est en sa garde si laction soit p*er*sonele veniale. E si ad difference p*ar* entre mortels actions e veniales en taunt q*e* en morteles app*ent* a fere p*ri*merement suite ver les p*r*incipaux singulerement e pus ver les accessoires; e en veniales actions de p*er*sonels tr*es*pas appent acumprendre trestuz en une pleinte a une foiz en commun les p*r*incipals, les comaundours, les conspiratours, e les autres accessoires, si q*e* len ne recoevre plusours amendes de j. trespass p*ar* pluralite des pleintes; nul des accessoires neq*e*dent niert tenu a respoundre al actioun einz ces [1] q*e* ascun p*r*incipal eit respoundu ou soit condemme p*ar* contumace.

Les p*er*sonels trespas soloient estre oiz e t*er*minez es courtz de meisme les fieus, e adunq*e* se firent les attachemenz p*ar* les cors des peccheours, e les soloit len retenir e mener en jugement sil ne fussent meinpris saunz offendre droit.

Li bref remedial de trespas voet seurte de suire, q*e* nul ne poet trov*er* qest en garde sanz son gardein, pur ceo qil ne se pount obliger daquint*er* lour pleges. Si ascuns neqedent deveignent pleges de sieure en tieux cas de lur gre il sunt a ceo rescevables, mes cil cheent p*ar* taunt en damage pur noun suite, il naverent nul recoverir v*er* le

[1] Corr. *ceo*.

thing which is in ward, then the action belongs to the guardian whoever he may be, whether he has come to it by succession or by purchase.[1] If to a man who is in ward, the suit belongs to the guardian or to the next friend, by consanguinity, affinity or alliance, in the name and for the use of him who is in ward. Of goods held in common there can be no several action. And therefore for the goods of men professed in religion the action belongs to the head of the house in his own name for himself and his convent. Or the action may be brought in the name of him who is in ward, if it be a venial personal action. And there is this difference between mortal and venial actions, for that in mortal actions it behoves one to make suit in the first instance only against the principals, and afterwards one may prosecute the accessories; but in venial actions for personal trespasses one must comprehend at one time and in one plaint all in common, the principals, the commanders, the conspirators and all the other accessories, so that one may not recover many compensations for one trespass by a plurality of plaints; nevertheless none of the accessories is bound to answer to the action until some principal has answered or been condemned for contumacy.

Pleas of personal trespass used to be heard and determined in the courts of the fees on which the trespasses were committed, and in such case the attachments were made by the bodies of the sinners, and without breach of the law were they detained and brought before the court if they were not mainprised.

The remedial writ of trespass requires surety for prosecution, and this no one who is in ward can find without his guardian, because he cannot bind himself to acquit his pledges. But if nevertheless in such a case anyone will become a pledge for the prosecution of his own free will, he may be received as such, but if any loss falls upon him by reason of a non-suit, he will have no recovery against his

[1] An ecclesiastical vestment, e.g., belongs to another thing, namely, a church, which thing is in ward to the parson. So chattels may belong to the crown, and the crown is in ward to the king.

principal. Seurte de suire se fet en plusors maneres :—ascun foiz par pleges si com est de ceux qe les perjurent[1] trouer ; ascun foiz par fiauncer si com est de foreins e de povres qi nunt poer a trover pleges duzeines ;[2] e ascuns foiz par les cors des pleintifs sicom est dappellours qi nunt autre sieurte qe les iiij. murs de la gaole. E pur les duresces qe lem soloit fere as cors de peccheours en personels pecchiez venials, ordena le Roi Henri le premer qe les len attache primerement par les cors jesqes ataunt qil se justicent par meinpernours, e sil ne soient troviez, ou sil naquitent les meinspernours, adunqe sont il naamables par lur fieus a la vaillaunce de la demaunde, e sil facent adunqe defaute a dunc sunt les fieus liverables as pleintifs a tenir jesqes a due satisfactioun par renable estente sil avant ne sei justicent de estre adroit.

Des plegges notez qe ceux sunt pleges de suire par queux pleintes safferment, e ceaux sunt pleges qe plevissent autre chose qi[3] cors de homme, car tieux ne sunt mie proprement pleges, einz sunt meinpernours, pur ceo qil supposent qe tieux plevissables sunt liverez a eus par bail, cors pur cors.

Commune demonstraunce des pleintes veniales comencent en ceste fourme—Ceo vous monstre A. qe ci est, qe B. qi illoec est, atort delaia soun droit par une faus essoine qe il geta tiel jour en tiel lu ecet a ces[4] grefs damages. Les pleintes des trespaz fez countre la pees le Roi sunt assez esies a monstre. E les trespas aussi fetz countre la pees des seignurs ou de baillifs.

E en haine des fauses pleintes ordena le Roi Henri le primer qe audience fust vee as pleintifs en venials accions,

[1] Corr. *purront* (?).
[2] Corr. *denzeines* (?).
[3] orr. *qe*.
[4] Corr. *ses*.

principal. Surety for prosecution is found in various ways :—One is by pledges, if such can be found ; another by plight of troth, as in the case of foreigners and poor folk who cannot find denizen pledges ;[1] and another by the bodies of the plaintiffs, as in the case of appellors, for whom no surety will suffice save the four walls of the gaol. And because of the hardships which were commonly inflicted on the bodies of the sinners charged with venial personal sins, King Henry the First ordained that they should in the first instance be attached by their bodies until they should submit to justice by finding mainpernors, and if mainpernors were not found or if they did not acquit themselves of their undertaking, then [the defendants] were to be distrainable by their fees to the amount of the demand, and if they then made default, then those fees were to be delivered to the plaintiffs to hold until due satisfaction should be made according to a reasonable appraisement of the profits of the land, unless in the meanwhile they should submit themselves to justice.

As to pledges, note that some are pledges for prosecution by whom plaints are affirmed, and others are pledges who undertake for something other than the production of a man's body : for those who undertake to produce a man's body are more properly called mainpernors than pledges, because it is supposed that those who are plevied by them are delivered to them by bailment, so that body must answer for body.

The common count in the case of venial plaints begins thus : This sheweth to you A, who is here, that B, who is there, wrongfully delayed his right by a false essoin which he cast on such a day and such a place to his great damage. Plaints of trespass done against the king's peace can be easily set forth, and so can plaints of trespass done against the peace of the lords and bailiffs.

And for the suppression of false plaints King Henry the First ordained that in venial actions the plaintiff should not

[1] Or, perhaps, 'a dozen pledges.'

e qe nul nestoeit respondre si les actors ne eient testmoinage de loiale sute presente.

En taunt est difference par entre criminale accioun contier e veniale, qe si countor met avant paroles criminales si com felonessement com feloun ecet., en les demonstraunces de venials accions, par tant sunt les counties vicious e abateables pur ceo qe li juge nad poer par veniale pleinte terminer felonie. E en mesme la manere est countie vicious e abatable e[1] li counte se monstre par paroles sur le droit de la propriete sur plee de possessioun ou le revers. E ascuns acciouns sunt ou nul counte nappent sicom deseisine redeseisine certificacioun faus jugement e atteinde.

Ch. XXV. De Novele Disseisine Assise.

Entre les autres personels trespas ne fet mie a oblier a fere mencioun del pecchie de disseisine ; dunt enprimers fet aveoir del title purquei len appele cest[2] lassise de novele disseisine.

Assise en un cas nest autre chose qe cession des justices ; en autre cas une ordenaunce de un certein, ou rien ne poet estre meins ne plus par droit. Car pur les granz malices qe lem soloit procurer en testmoinage, e les granz delais qe se firent en les examinementz excepcions e attestaciouns ordena Randulf de Glanvill tele certeine assise, qe reconussaunces e jurees se feissent par xij. jurours des proscheines veisins. E issi est cel establissement appelle assise. El tierz cas est assise proprement done pur actioun en iiij. maners des ples possessoires ; novele disseisine, mortdancestor, drein present, e de utrum. Mes celes assises sunt appellez petites a la difference des grantz. Car lei de fieus tut founde sur ij. droiz, de possessioun e de proprietie. E si com grant assise sert al droit de propriete, aussi sert la petite assise al droit de la possession. E

[1] Corr. *ou*.

[2] Supp. *assize*.

be heard and the defendant should not be put to answer unless the plaintiff produced the testimony of a lawful *secta.*

There is this difference between a count in a criminal action and one in venial action, viz., that if in a venial action the pleader puts in his count such words as 'feloniously as a felon,' the count is vicious and abatable, for that the judge who is trying a venial plaint has no power to decide about felony; and similarly a count is vicious and abatable if it speaks of the right of property in a possessory action, or *vice versa.* And there are some actions in which there is no count, such as disseisin, redisseisin, certification, false judgment and attaint.

Ch. XXV. Of the Assize of Novel Disseisin.

Among the other personal trespasses we must not forget to mention the sin of disseisin; and in the first place we must see why the action is entitled to the name assize of novel disseisin.

By *assize* we sometimes mean merely a session of justices; sometimes we mean an ordinance which fixes some certain measure and will not permit excess or defect. And because of the malice shown in the procuration of testimony and the great delay that there was in examinations, exceptions, and attestations, Ranulf de Glanvill ordained this certain assize, to wit, that recognitions and juries should be made by twelve jurors from among the next neighbours. And therefore this institution was called an assize. In a third meaning *assizė* stands as the proper name of the action given by the law in four kinds of possessory pleas—(1) novel disseisin; (2) mort d'ancestor; (3) darein presentment; (4) utrum. And these assizes are called petty to distinguish them from the grand assize. For the law of fees is all founded on two rights, that of possession and that of property. And just as the grand assize serves for the right of property, the petty assize serves for the right of possession. And because these petty

purceo qe teles petites assises sunt pernables es countiez ou les fieus sunt par lestatut le Roi Edward, appele lem tiels actions assises; ou pur le general assessioun des justices e dautres; ou pur les propres nouns de teles actiouns.

Novele est dit a la difference de aunciene, car aunciement soloient les Rois en propres persones errer de paiis en paiis pur enquere, oir, e terminer les pecchiez e pur redrescer les torz, e ceo qe nestoit point attame en teles eires des personeux trespas fetz avant remist al jugement dieu. E puis par multiplicacioun des pecchez ne poieient mie les Rois tut fere par eus e pur ceo envoierent il lur comissaires qi sont ore appellez justices erranz, qe neunt poer doir e terminer nul personel trespas forqe pur chose attame e nient terminie en la derreine eire e pus fete. E dunt pur ceo qe disseisine en personel trespas pur ceo qe lactione ou la disseisine est aunciene,[1] mes si deseisine soit fet pus la dereine eire adunc est ele novele.

Desseisine est un personel trespas de torcenouse toute de possessioun. Torcenouse est dist a la difference de droiturele qe nen est mie pecchie, cum si jeo toille a ma femme a[2] moun serf ou a autre qi est en ma garde ceo qe mien est, ou si com vous me toillez le miene, jeo freschement le vous retoille, jeo ne pecchie nient, car jeo en su garanti par lei naturele, de si com tel usage est comun a hommes, bestes, pessons, oisealx e as totes teriens creatures, mes ceo ne poi jeo mie fere lendimein ne pus, car si jeo de ma force vous toille chose dunt vous avez eu pesible seisine, jeo vous faz deseisine e faz despit au Roi quant jeo me defi de soun dreit e use force ou jeo deusse user jugement.

Dautre part ceo qe toilleit me est par loial jugement del juge assigne, ordeneire, ou arbitraire ne mest mie tolleit torcenousement. Toute est ici pris aussi bien pur deforcement ou desturbeance cum pur ejeccioun. Deforcement

[1] *Donque pur ceo, que le disseisin ou le personall action fuit fait avant ceo, le action ou le disseisin est auncient*, Houard.

[2] Corr. *ou*.

assizes are by a statute of King Edward[1] to be taken in the counties in which the fees to which they relate are situate, they are called *assizes*; or else this is because they come before a general session of justices and others; or else the name is merely a proper name for these actions.

'Novel' in the term 'novel disseisin' is opposed to ancient, for in old times the kings in their proper persons used to journey round the country to inquire of, hear and determine sins and to redress injuries, and any personal trespass previously committed which was not entered in such eyres stood over for the judgment of God. And afterwards, by reason of the multiplication of sins, the kings could not do all by themselves, and therefore they sent their commissioners, who are now called justices in eyre; and they have no power to hear and determine any personal trespass unless it was entered but not determined in the last eyre; or was done since then. And therefore a personal action which arose or a disseisin which was done before that time was ancient, but a disseisin done since the last eyre is novel.

Disseisin is a personal trespass by a tortious taking of possession. 'Tortious' we say to distinguish it from a rightful taking, which is no sin; as if I take from my wife or my serf or another who is in my ward that which is mine, or if you take what is mine and I at once take it back again, I do not sin, for I am warranted by the law of nature, since such a procedure is common to men, beasts, fishes, birds, and all other earthly creatures; but I may not do this on the morrow nor at a later time, for if I by my force take from you that of which you have had peaceable seisin, I do a disseisin to you, and do despite to the king when I distrust his justice and have recourse to force where I ought to have had recourse to judgment.

On the other hand, that which is taken from me by lawful judgment of a judge assigned, or a judge ordinary, or an arbitrator, is not taken tortiously. The word 'taking' as here used includes as well deforcement or disturbance as ejectment. Deforcement is as if one

[1] Stat. West. II. cap. xxx.

cum si ascun entre en autri tenement taunt cum li verroi seignur est al marche ou aillours, e retorne e ne poet aver lentre einz en est deforcie e debotie. Destorbaunce com si ascun me destourbe atort de user ma seisine la quele jeo ai euue pesible ; e ceo purra estre en iij. maners : lun cum qi me vee destresce q*e* jeo ne puisse destreindre tenement a ma destresce oblige, dunt jai este seisi avant ; lautre cu*m* qi replevist sa destresce p*ar* le viscounte ou hundreder torcenousement ; la tierce cum si ascun me destreigne si out*rai*ousemen*t* q*e* jeo ne puis moun fieu gaigner ne user duement, en quel cas suffist j. destreignour out*rai*ous pur desseisour e pur tena*nt*. Eiectioun cum si ascun me gette de moun tenement dunt jeo ai este pesiblement seisi p*ar* descente de heritage ou autre loial title.

De possession notez q*e* tut droit se tient en ij. menbres ; ou el droit de la possessioun ou el droit de la p*ro*prietie. E pur ceo q*e* li droit de p*ro*prietie nest jam*m*es t*er*minable p*ar* ceste assise, est motoie possessioun [1] cu*m* cele q*e* tut savoure del droit possessour.

Li remedie de disseisine ne tient lu de biens moebles ne de rien q*e* ne poet cheir en h*er*itage, t*er*re, tenement, rente, avoeson de eglise e de meson de religioun, fraunchises, apurtenauntes, e tieux autrez droiz le q*e*l qil soient tenues p*er*petuelement a touz jours, ou a c*er*tein t*er*me de vie ou ans solom le contract, aussi bien com de fieu engagie iesqes a tant q*e* tiel ou ces heirs rendent taunt a tel tenaunt ou a ces heires.

Ejection de t*er*me des ans de fieu chest en ceste assise q*e* ascun foiz ment [2] de lees ou de bail ou de preste, e ascune foiz de droit de garde p*ar* le noun age de ascun heir e appent le recov*er*ir atenir solom la fourme del cont*ra*ct.

[1] *assise qui est de notoire possessioun*, Houard. [2] Corr. *vient*.

enters into the tenement of another while the true owner is at market or elsewhere, and he on his return cannot obtain an entry, but is deforced and repelled. Disturbance is as if one tortiously disturbs me in the use of a seisin that I have had peaceably; and this can be in three ways: first, if he resists distress so that I cannot distrain a tenement which is subject to my right to distrain, of which right I have been seised in the past; secondly, if tortiously he replevies the distress by the aid of the sheriff or the hundredor; thirdly, if one distrains me so outrageously that I cannot make profit of my fee nor make proper use of it, in which case a single outrageous distrainor will serve both as disseisor and as tenant in the assize. Ejectment is as if one casts me out of a tenement of which I am peaceably seised by the descent of an inheritance or other lawful title.

As to possession, note that every right is of one of two kinds: it is a possessory or a proprietary right. And because the right of property can never be determined by this assize, it is [called possessory][1] as savouring altogether of the right of possession.

The remedy by assize of disseisin is not applicable to movable goods nor to anything save what can come by inheritance, such as land, tenement, rent, the advowson of a church or of a religious house, franchises, appurtenances, and such other rights as are held perpetually for ever, or for a certain term of life or years under a contract; also it is applicable to a fee which is put in gage until such time as such an one or his heirs shall render such a sum to the tenant or his heirs.

Ejectment from a fee of a tenant for term of years falls within this assize, and such a term may have its origin in a lease or bailment or loan, or in right of a wardship by reason of the nonage of the heir, and the tenant is entitled to recover the land to hold according to the form of the contract.[2]

[1] The meaning of the text is uncertain.

[2] This doctrine, that the ejected tenant for years can bring an assize, is one of our author's heresies. By the *fee* the land itself is meant.

Villenage en cas chiet en ceste assise sicom apres iert dist.

Presentemenz de eglises cheent en ceste assise com franc tenement a ceaux qe sount engettez ou desturbez de continuer lur seisine dendreit les presentemenz, e dunt si contracts se face par entre ascun donour e ascun purchaceour, tut soit qe li purchaceour ne puisse seisi[1] vivant le clerc le doneour institut de leglise, le title neqedent del contracte barre jalemeins le donour qe mes ne purra resortir de presentir contre la fourme del contract, e cil face cil doneour chiet en cest assize, e li evesqe oveqe qi doune linstitucion a tiel qe point ne[2] presentee par celi aqi le droit de presenter appent en soun noun demeine.

En cesti assise cheent aussi donours e purchaceours qi funt contracts vicious de fieus e de possessiouns, cum est de gardeins e de fermers qi lessent autriz heritages plus loinz qe lur terme ne dure, en prejudice de lur seignur de la propretie ou de celi a qi la reversioun appent, cum est de ceaux lessours qe unt fieu taille.

Dautre part cheent en ceste pecche les ministres le Roi e autres qi desseisent homme ou comonaltie[3] de franchise dunt il sunt enheritez par loial title, si noun pur defaute, abusion ou negligence de ceaux ou de lur bailiffs a qi les franchises sunt. En cest pecchie cheent aussi touz attornez qi rendent heritage ou le franc tenement lur clientz en jugement, e les justices aussi qi a ceo les retournent e les tenaunz ovek, car as attornez nappent nient arendre les droiz lur clienz, einz appent a defendre les jesqes a droit jugement. En cest pecchie cheent ausi tuz ceaux qe funt

[1] Corr. *ne puisse presenter.*
[2] Corr. *nest.*
[3] Here the MS. begins a new paragraph.

A tenement held in villainage is in some cases within this assize, as shall be said hereafter.[1]

Presentations to churches fall within this assize as being the free tenement of those who are ejected or disturbed in the continuance of their seisin in the matter of the said presentations, and if thereof a contract be made between a donor and a purchaser, albeit the purchaser cannot present to the church during the life of the clerk instituted by the donor, nevertheless the donor will at least be barred by his contract from presenting contrary to the form of the contract, and if he does present, then he is within this assize, and so is the bishop who institutes a clerk who has not been presented by one who was entitled to present in his own name.[2]

And into this assize fall donors and purchasers who make vicious contracts as to fees and possessions, as is the case with guardians or farmers who lease the heritages which belong to another for a longer term than that of their own tenure, to the prejudice of the lord of the property or of him to whom the reversion belongs, as is the case of those lessors who have a fee tail.[3]

And so too fall into this sin the ministers of the king and others who disseise a man or a commonalty of the franchises which they have inherited by lawful title, if it be not because of the default, abuse or negligence of those to whom the franchises belong, or of their bailiffs. Into this sin fall also all those attornies who surrender in court the inheritance or freehold of their clients, and those justices also who restore the fees to them and the tenants also,[4] for to an attorney it belongeth, not to surrender the rights of his clients, but to defend them until right judgment is given. Into this sin also fall all those

[1] See below, Book II. c. 28.

[2] All this seems to be heterodox. Was the Novel Disseisin ever applied to advowsons or rights of presentation?

[3] Our author seems to think that a feoffment in fee simple made by a tenant in fee tail would be a disseisin.

[4] The writer seems to be thinking of a case in which an attorney surrenders land in court by fine, and then takes it back as his own. The justices who take part in such a transaction are, in his eyes, disseisors.

gast, exil ou destruction en fieus outre ceo qe nen est avouable de droit; einz ceaux qi sunt[1] assignez ou li feffment de eux meimes ou de lur auncestres fet mencion forqe des heirs, e ceo poet estre en ij. maneres ou as heirs generalment ou as heirs especials nomez sicom en fiez talliez ou nient nomes sicom es mariages.

Ceste actioun poet sure totes genz hommes e femmes, clers e lais, enfauns e autres de quele conditioun qil soient, as queux lei nel defent.

Defendu est as serfs asure ceste accioun taunt cum il sunt en la garde lur seignur saunz lur gardein, e en meme la manere as femmes espouses e as tutz autres qi en garde sunt, e as ceaux qi nen furent unqe tenaunz en lur noun demeine, nomement en lur noun demeine sure.[2] Droit defend aussi la suite as ceaux qi autre foiz se sunt retrez de meime lactioun en jugement ou unt relessie e quite clame lur droit.

E notez qe retrere e sutrere nest mie j. Retrere se poet homme de ij. choses, de soun bref e de sa actioun, mes de lun ne del autre ne se poet len james retrere si len nel die apertement, car par atturne nel porra nul dire. Mes sustrere poet chescun actour par li ou par son atturnee, le quel qil soit present en court ou absent. E dunt, tut soit qe ascun ne voille suire sa pleinte pur ceo ne sei retret il mie de sa actioun qil ne puisse resortir a novele bref e a novele pleinte, sil ne die en jugement qil se retret del actioun.

Ver queux tient lu ceste remedie ; ver le disseisour j. ou plusours, ver tuz ceux qi lur venent en force e en eide.

[1] Corr. *funt.* [2] Corr. *nomement en le noun lur seignur.*

who commit waste, exile or destruction in lands beyond what is by law avowable; also those who make assigns where the feoffment to them or to their ancestors only makes mention of heirs;[1] and this may be in two ways: either mention is made of heirs generally or of special heirs as is the case in fees that are tailed, or again the heirs may not be mentioned, as in the case of gifts in marriage.

This action can be sued by all men and all women, clerks and laymen, infants, and others of whatever condition they may be, if the law does not deny it to them.

It is denied to serfs so long as they are in ward to their lords to sue this action without their guardian, and in the same way it is denied to married women and all others who are in ward, and to those who have never held in their own name, in particular if they have been holding in the name of their lord. Law also denies the suit to those who on another occasion have retracted themselves from the same action or have released or quit-claimed their right.

And note that to retract and to subtract is not all one. A man may retract himself from two things, from his writ and from his action, but from neither one nor the other can he retract himself unless he says so openly, for by his attorney he cannot say that he does so. But every plaintiff can subtract himself either by himself or by his attorney, whether he be present in court or absent. And therefore, albeit a man will not prosecute his suit, he does not thereby retract himself from his action so as to prevent himself from having resort to a new writ and new plaint, unless he says in court that he retracts himself from the action.

Against whom this remedy is available: against the one disseisor or the several disseisors, and all those who come to their force or their aid.

[1] This seems an attempt to restore what the writer believed to be the good old law.

Ch. XXVI. De Vee de Naam.

Une accioun mixte [1] founde sur *per*sonel trespas accrest as genz torcenousement naames qest appelle de naam. E pur quei nul ne passe [2] sa robberie ne son larcin covrir p*ar* naam, fet assavoir q*e* naam est, la division de naam, q*e* poet naamer, q*u*ant, ou de queles choses, ou naam est metable, e del vee.

Naam nest autre chose q*e* renable destresce. Renable destresce est a la vaillaunce de droiturele demaunde saunz autre vice car droit nanomie [3] nul outrage.

Deus maneres sunt de naam. Naam mort sicom de blez, vins, e autres tiez chateaux, e naam vif, sico*m* de hom*m*e, beste, e tiels vives choses. Naamer ne poet nul qi a ceo fere nen est garanti p*ar* lei, ou p*ar* especiall fet; par lei, sico*m* pur damage fesant, e pur dettez e contract de foreins, car foreins sunt naamables p*ar* renable destresce des biens moebles e nient somonables pur ceo qil ne sunt mie fieus tenaunz es lus ou il sunt destreinz, e si com pur dette recov*er*ee ou conue le quel ele isse de am*er*cient,[4] de damages, darrerages dacounte, ou dautre chose; par fet, com si vous me doignez ascun amistie [5] me g*r*antez ades-treindre en vostre fieu pur les arrerages de cel doun, ou dautre s*er*vice, e obligez vos possessions q*e* ne sunt mie de mon fieu, en qi meins q*e* eles deveignent.

Q*u*ant lem purra naamer. Naamer poet lem hom*m*e, beste, e tote vif chose, taunt cu*m* len le troet el damage e ne mie lendemein ne apres. E ap*r*es le t*er*me del paiement

[1] *juste*, 1642 and Houard.
[2] Corr. *puisse*.
[3] Corr. *nallowe* (?).
[4] Corr. *amerciment*.
[5] Corr. *annuite* (?).

Ch. XXVI. Of Naam refused.[1]

A mixed action founded upon a personal trespass accrues to those who are wrongfully naamed, which is called an action of naam. And for that no one can cover his robbery or his larceny by pretext that it is a naam, we should know what naam is; how cases of naam may be divided; who can naam; when; what things; where a naam must be put; and [we have also to consider] the refusal [which is the gist of the action].

A naam is nothing else than a reasonable distress. A reasonable distress is one corresponding to the value of a rightful demand and must not be affected by any other vice, for law will not justify any outrage.

There are two kinds of naam: dead naam, as of corn, wine, and other such chattels; and live naam, as of a man, or beast, or such living things. No one can naam who has not a warrant for so doing by law or by special deed; by law, as for damage fesant, and for the debts and contracts of foreigners (since foreigners are naamable by reasonable distress of their movable goods, and are not summonable for that they are not tenants of fees in the places where they are distrained), also for a debt recovered or confessed which issues from an amerciament, from damages, from the arrears of an account, or otherwise; or by deed, as if you give me an annuity and grant that I may distrain in your fee for the arrears of this gift, or for some other service, and oblige your possessions, which are not my fee, into whosesoever hands they shall come.

When one can naam. One can naam man, beast, and every other live thing, provided he or it be found doing damage, but one must not wait until the morrow or a later time. And one must naam after the term for payment is

[1] In the translation of this chapter the old word *naam*, or *nam*, has been preserved; it signifies a taking, or thing taken, in distress; cf. our *withernam*, and the German *nehmen*, to take. The distrainor who, when sufficient security is offered, refuses to deliver up the *naam* is guilty of a *vee de naam*; an action *de vetito namii* lies against him. We could hardly give the sense of the original text if we called this action an action of replevin.

e ne mie av*ant*. E ne mie chescun jour, car p*ar* dimenche ne fet point a destreindre si noun pur damage fesaunt ; ne en totes houres car avant le soleil levee, napres le solail recousie, ne nutantre deit nul destreindre, si noun pur damage fesaunt.

Ou len purra naamer. En lus ou ierz [1] es fieus obligez e ne mie dedenz enfermure.

De queux biens. P*ar* tutz biens q*e* droit ne defent. Droit defent q*e* nul ne destreigne p*ar* une [2] destresce taunt co*m* len tro*e*ve suffisantm*ent* a naamer en lu overt covenable naam mort. E covenable naam mort nest mie p*ar* armeures, p*ar* vessele, p*ar* robes, p*ar* ieueles, par esc*ri*z, tant co*m* len troeve autre naam suffisalm*ent* en lu du. Covenable naam vif nen est mie p*ar* berbiz, chastriz, motons, ou de meme [3] mounteure, p*ar* bestes charueres, p*ar* chiens, oiseals, polaille, poison, ou p*ar* sauvagine tant com leur troet autres bestes udives.[4]

Naam nest mie enportable, menable, ou chaceable a la volunte del destreignur. Par cas einz si ascun destreignur ne troeve q*e* naamer forq*e* dedenz enclosture, en tieu cas napent autre defrai forq*e* de ensealer les biens enclos e de les sequestrer saunz autre violence fere, e si ascun brise ou enfreigne tieux sequestrez del seal ou de p*art*,[5] si fet g*r*andment countre la pees e trespas au Roi e al seignur del fieu e as viscountes e as hundreders pur lur pees enfreinte, e a la p*ar*tie pur la delai de son droit ; e pur ceo q*e* fet hu e cri lever sur tieux cu*m* sur ceux qi sunt countre la pees.

Naam mort trovie en lu covenable ne naam vif nest [6] mie portable ne chaceable hors del fieu, ou hors del hundred ou del countie, ne metable ne denz enfermure, ou aillours ou celi a qi le naam est ne en puisse aver linspeccioun, einz est metable en lu ou li naam e celi q*e* le deit en purr*ent* meins estre grevez.

De ve sunt ij. man*e*res, lune q*uant* len vee vif naam

[1] Corr. *terres* (?).
[2] Corr. *vive*.
[3] Corr. *demesne* (?).
[4] Corr. *vives* or *oisives* [animalia otiosa].
[5] Corr. *parc* or *porte*.
[6] *nest* repeated.

passed, and not before. And one cannot do it on every day, for on Sunday one may not distrain save for damage fesant; nor at every hour, for one may not distrain before sunrise, nor after sunset, nor by night, if it be not for damage fesant.

Where one may naam. In places or lands in the fees that are under the obligation and not within closed doors.

What goods. All goods not forbidden by law. Law forbids that one should distrain by a live distress so long as one can find in an open place a proper dead naam. Armour, plate, clothes, jewels and writings are not a proper dead naam so long as another sufficient naam can be found in a proper place. Ewes, wethers, muttons, or horses kept for riding, beasts of the plough, dogs, birds, poultry, fish or waterfowl are not a proper live naam so long as other beasts of pleasure can be found.

A naam is not to be carried, led, or driven away at the will of the distrainor. If it happen that a distrainor can find no naam save within an enclosure, in such case he may do nothing else than seal up the enclosed goods and sequester them without further violence, and if anyone breaks or forces open the seal or the pound wherein the things are sequestered, he commits a great breach of the peace and trespasses against the king and the lord of the fee and the sheriffs and the hundredors by the breach of their peace, and against the party by delaying him of his right; and for this reason hue and cry shall be made after such as do this as it would be after those who are against the peace.

Neither dead naam found in a proper place, nor live naam, may be carried or driven out of the fee, or out of the hundred or the county, nor may it be put within a place that is shut, nor elsewhere so as to prevent him to whom it belongs from inspecting it; but it shall be put in such a place that both it and he to whom it belongs will suffer the least hardship.

Then as to the refusal; of this there are two kinds: the first where one refuses to deliver a live naam on the tender

countre pleges ou gage suffisaunt, lautre quant len ne se soeffre mie estre destreint a droit. E lun e lautre sunt personex trespas countre la pees. E dunt si ascun soit naamie a tort, distinctez ou par ceux qi poent naamer ou par autres. E si par autres, adunc tient lieu appeal de robberie ou hailif[1] jugement en fet notoire.

E si par ceux qi poent, adunc appent adeliverer la naam par gage e pleges.

E si le destreignur e lactour del naam en fet le ve, adunc appent la conussaunce del ve au Roi, e issi tient lu remedie par le bref de replegiari. Pur laise neqedent de teles destresces e pur hastier droit, ordena Randulf de Glanville, qe viscontes e hundreders preignent sieurte de suire des pleintif, e deliverent les naames, e eient[2] e terminent les pleintes de torcenouses destrescez, sauve au Roi sa suite quant al ve.

Deus choses cheent en ceste pleinte par simples pleintes, prise e detenue. Dunt iiij. degres sunt:—ou la prise est avouable pur droiturele e la detenue aussi sicom pur dette due e atteinte; ou ambedeus sunt torcenouses, si com teles qi sont desavouables de touz costes; ou la prise droiturele, sicom en damage e la detenue torcenouse sicom countre gage e pleges suffisaunt offerz; ou la prise torcenouse, sicom en enfermeure e la detenue droiturele, sicom pur dette conue. E de nient plus ne unt juges ordenaires conoissaunce. Mes en cas ou li ple se moet par bref apent aconoistre de la prise, e detenue[3] tient lu remedie par assise de novele disseisine.[4]

Prise e detenue se funt ascun foiz par j. home ascun fois par plusours, e ascune fois par corruz[1] e ascune par desconuz, mes coment qe les pernours soient conuz, les

[1] Corr. *hastif.*
[2] Corr. *oient.*
[3] *del detinue*, Houard.
[4] The manner in which this sentence should be punctuated is uncertain.
[5] Corr. *conuz.*

of sufficient pledge or gage, the other where one will not suffer oneself to be rightfully distrained. And both of these are personal trespasses against the peace. And therefore, if anyone be wrongfully naamed, you must distinguish whether this be done by those who are entitled to naam or by others. In the latter case an appeal of robbery will lie, or there will be speedy judgment against the distrainor as against a thief taken in the act.

But if the naam be taken by one who is entitled to distrain, then the owner must obtain a delivery of it by offering gage and pledges.

And if the distrainor who has taken the naam is guilty of a refusal, then the cognisance of this refusal belongs to the king, and the remedy by writ of replevin is applicable. But for the ease of those who are distrained and to hasten justice, Ranulf de Glanville ordained that sheriffs and hundredors should take from the plaintiffs surety to prosecute, and deliver the naams, and hear and determine the plaints of those who are tortiously distrained, saving to the king his suit founded upon the refusal.

Two matters fall within this plaint where there is a simple plaint of taking and detaining. And here there are four degrees:—(1) Where both the taking and the detaining can be avowed as rightful, as for a debt due and recovered; (2) where both are tortious, as when the distrainor cannot avow what he has done in any particular; (3) where the taking is rightful, as for damage fesant, but the detaining is tortious, as being in despite of an offer of sufficient gage and pledges; (4) where the taking is tortious, as where an enclosure has been opened, but the detaining is rightful, as for a debt that has been confessed. And no judge ordinary has cognisance of any points but these. But in case where the plea is begun by a writ, then the judge may take cognisance of the taking, while as to the detaining the remedy by way of assize of novel disseisin is applicable.

The taking and detaining are sometimes done by one man, sometimes by several men, sometimes by those who are known, sometimes by those who are unknown; and

nouns neqedent de detenours covendra assavoir, e solom lavouerie del auctour ou de soun baillif sil ne seit *pre*sent covend*ra* fornir la monstraunce e la pleinte, jointement sur les p*er*nours e sur les detenours, ou sev*er*alment sur lun de euz. E si sur ambedeus, adu*n*c issi: atort prist e prendre fist p*ar* tiel conu ou desconu, e le chaca ou porta ec*et.*, e atort le detient countre gage e pleges e uncore en est seisi. Ou issi: a tort le detint de tiel jour iesqes a tiel q*e* il le deliv*er*a p*ar* le baillif le Roi, a ces damages ec*et.* Car cele p*ar*ole q*e* uncore en est seisi sert a ceaux qi ne poent aver la veuue [1] del naam, e a ceux q*e* detenent naam p*ar* avouerie de p*ro*p*ri*ete.

Ch. XXVII. De Contract.

Contract est p*ur*parlance dentre gentz q*e* chose nient fet se face. E quitent [2] plusours especes dunt plusours sont p*er*petueles si com done, vente, e mat*ri*moignes, e autres sont temporeles, sicom les bails e fermes. E une espece est mixte si com chaunge q*e* ascun foiz se fet a tieux [3] e ascune foiz a james. E une espece est obligacion. E pur ceo q*e* droit ne se medle mie de chescun contract, fet aveoir qi porrent fere cont*ract*s, e de quei.

Contract list a fere a touz ou droit nel defent. Droit defent q*e* nul ne face cont*ra*ct as enemis le Roi celestre ne t*er*estre, ne as mortiex peccheours, ne a ceux q*e* ne sunt a la foi crestiene, ne as utlaguez ne as weivees, ne as ceaux qi se sunt conuz pur felouns, ne as escomengez, ne a nul qest en garde si noun al p*ro*fit de ceux en garde, ne as sourz ne a muz, ne as foux nastres, ne arragez, ne appeles ou enditez de c*ri*m.

De queles choses list a fere contract. De totes choses

[1] Or *venue*. [2] Corr. *de qui sont*, Houard. [3] Corr. *tems*.

although the takers be known, it is necessary to discover the names of the detainors, and one must form one's count and plaint according to the avowry of the person who made the distress, or, if he be not present, of his bailiff, so as either to charge the takers and the detainors jointly, or so as to charge them severally. And if the count be against both takers and detainors, it is made thus: 'Tortiously he took and caused to be taken by such a person, known or unknown, and drove or carried etc., and tortiously detains against gage and pledges, and is still seised.' Or thus: 'Tortiously detained from such to such a day, when he, the plaintiff, procured their deliverance by the king's bailiff; to the plaintiff's damage etc.' For this phrase 'he is still seised' serves only where the plaintiff has not been able to obtain a view of the naam, or where the defendant avows the goods taken as his own property.

Ch. XXVII. Of Contract.

Contract is a discourse between persons to the effect that something that is not done shall be done. And of this there are divers kinds, some of which are perpetual, such as gift, sale, matrimony, and others are temporary, such as bailments and leases. And there is a mixed kind, such as exchange, which may be for a time or may be for ever. And one kind of contract is an obligation. And for that law does not meddle with every contract, we must know who can make contracts and concerning what.

Anyone may make a contract who is not forbidden to do so by law. Law forbids one to make a contract with an enemy of the heavenly or the earthly king, or with those who are in mortal sin, or with those who are not of the Christian faith, or with outlaws or those who are waived, or with confessed felons or excommunicates, or with those who are in ward unless it be for their advantage, or with the deaf or the dumb, or with born fools, or with lunatics, or with those who are appealed or indicted of crime.

As to what matters one may lawfully make a contract.

nient defendues de droit, car de lautri droit defent dreit qe len ne face contract,[1] coment si qe lem ne pecche ne qe pecche male fei seit contenu[2] el contracts sicom usure, deseisine, blemure del cors, desheritesoun, ou autre pecchie ou vice.

Contracts sei defent al damage de la partie gaignaunt par vice, par defense, e par mellure de pecchie. Contractz sunt vicious, ascune foiz par mellure de pecchie, ascune foiz par entremellure de male fei, ascun foiz quant il se funt countre defens, e ascun fois par faus supposicioun. El primer cas cum si jeo otroi qe si jeo ne vous face tiele chose ou tele, bien list a vous ou a autre a fere de moi le peche de homicide, de plaie, denprisonement ou de deseisine ou de usure, issi qe vous me puissez demaunder u c pur x,[3] ou autre pecchie. El secund cum si jeo vous doigne ou baille ou leste, en esperaunce qe vous le me redoignez, e cel don ne me retournez; ou si com jeo devise en testament avendre ascun de mes tenemenz pur mes dettes rendre, ou pur autre chose fere des devers,[4] e vous executours cel tenement retenez heritablement en propres us saunz fere execucion; ou si com jeo vous vende, ou moblige, ou chaunge, ballie ou donne, ou lesse en beance de aver de vous tantost ou a termes,[5] e vous me detenez ceo qe vous me promistes.

El tierz cas, com si jeo face ascun contract as ceux qe ne list. Le contract neqedent de matrimoigne nen est mie defendu par entre enfanz coment qe estre soloit, forpris en disparagacions, car disparagacion est un pecchie grantment defendu.

El quart cas, com est de chartres e de autres manere de monumenz faus supposanz. Com est de chartres de feffement fetes en lasseisine de doneours, e de chartres de quiteclamance fetes hors de la seisine de ceux qe les unt, car nule chartre nule vente ne nul doune vaut perpetuele-

[1] A new paragraph begins in MS.
[2] *Coment que il empesche tout en quoy mal foy est contenue*, Houard.
[3] This seems corrupt. [4] Corr. *deners*. [5] Corr. *tems* (?).

As to all matters not forbidden by law; but as to the right of another, the law forbids one to make a contract, for it prohibits [1] everything in which there is any sin or *mala fides*, as, for instance, usury, disseisin, bodily hurt, disherison, or other sin or vice.

Contracts are avoided to the disadvantage of the party who would have gained by them, by reason of vice, or of a prohibition, or of the intervention of sin. Contracts are vicious (1) by reason of the intervention of a sin, (2) by reason of the intervention of bad faith, (3) by reason of the breach of a prohibition, (4) by reason of a false supposition.

(1) In the first case, as if I grant that, if I do not do this or that thing for you, it shall be lawful for you or for another to commit against me the sin of homicide, of wounding, of imprisonment, of disseisin, or of usury, *e.g.* that you should demand from me 100 for 10, or any other sin.

(2) In the second case, as if I give, or bail, or lease to you, in the hope that you will give back, and you do not return the gift; or if I devise in my testament any of my tenements to be sold for the payment of my debts, or in order that something else may be done with the money, and you, my executors, retain this tenement heritably for your own use without executing my will; or if I make a sale, obligation, exchange, bailment, gift or lease to you in expectation to have something from you at once or after a time, and you detain from me what you have promised.

(3) In the third case, as if I make a contract with one with whom it is not lawful to contract. Nevertheless, the contract of matrimony between infants is not prohibited, as it used to be; unless there be a disparagement, for disparagement is a sin strictly forbidden.

(4) In the fourth case, as if false supposals be made in charters or other muniments. Such is the case where a charter of feoffment is made but the donor remains seised, or a charter of quitclaim is made to one who is not seised; for no charter, sale or gift will hold good permanently if

[1] The text is corrupt.

ment, si li donour nen est seisi el tens del contract de ij. droiz del droit de la possession e del droit de la propriete. E sicom chartre supposaunt doun estre fet sanz transmutacioun de seisin est viude, aussi est quiteclamance de chose dunt li actour de la chartre est memes en possession de la chose quiteclame. E sicom les chartres sont viudes avant diz es cas, aussi sunt les garanties e quant qe appent par tiex escriz, qe sunt sanz vertu pur lour fausse supposicion.

Dautrepart suppose simple monument faus qe testmoint doun returnable al donour ou a ses heirs, ou autre manere de condicion; car doun est touz jours simple è ment[1] de tele affectioun del donour quant al droit del doun qe la chose donee soit atteignalment al purchaceour saunz esperaunce de reversion. Simple monument[2] escrist sanz endenture e pur ceo voet droit qe les escritz tesmonials de contracts condicionels e supposanz reversioun soient endentiez e cirographes.

Contracts suppose auxi faus en homage pris en fraude de la lei, cum si jeo preigne vostre homage pur autre service qe por service issaunt de fieu de haubert.

Droit defent aussi qe nul ne lesse ne preigne terre ne feu ne possession a terme de anz a ferme, outre le terme de xl. ans, ne qe nul contracts ne se face de fieu ferme perpetuelement, ne a terme rendreent par an plus qe la quarte partie de la value. Ne qe nule femme soit douueie de avoueison de eglise, ne qe nul alienacion davoueison se face hors del sanc, si noun par doun perpetuel e pur, ne qe avoueison soit partie par entre parceners, einz remeigne

[1] Corr. *vient*. [2] Supply *est*.

the donor be not seised at the time of the contract in both rights, the right of possession and the right of property. And as a charter which supposes a gift to be made without a transmutation of seisin is void, so also is a quitclaim if the maker of the charter be himself in the possession of the thing that is quitclaimed. And as in these cases the charters are void, so also are the warranties and all that concerns such writings, for they have no validity because of their false suppositions.

Again, a 'simple' muniment makes a false supposition if it supposes a gift which is to return to the donor or to his heirs, or contains any other condition; for a gift is always simple, and if the gift is really a gift, the donor's intention is that the thing given shall belong to the purchaser for ever, and that there shall be no hope of a reversion. A 'simple' muniment is a writing without indenture, and therefore the law wills that all writings which contain conditional contracts and contemplate a reversion shall be indented and chirographed.[1]

A contract may make a false supposal as to homage done in fraud of the law, as if I receive your homage in respect of any other service than the service which issues from a hauberk fee [knight's fee].

The law also forbids that anyone should lease or take to farm land, or fee, or possession for any term of years beyond the term of forty years, or that any contracts should be made for a perpetual fee farm, or for any term at a higher rent than the fourth part of the annual value, and that any woman should be endowed of the advowson of a church, and that any alienation of an advowson should be made outside the blood of the owner, unless it be by a gift that is perpetual and 'pure,' and that an advowson should be partitioned among parceners, instead of remaining

[1] The author's 'simple' muniment is what we should call a deed poll. Chirographing, like indenting, is a device for proving that two instruments are 'parts' of one deed. They are written on one sheet of parchment; the word *Chirographum* in large letters is written between them, and then the sheet is cut in two by a line which runs transversely through this word.

enterement al proschein heir launcestre ou al einznesce fille, ne a nul a terme de ans, ou de vie, ne par fieu taille; car avoueison deglise est aussi com une espiritaltie qe ne soeffre nul alienacion forqe perpetuelle.

Endroit del contract de baille e daministration dautri biens e deners, bien list a chescun ces biens sagement despendre ou folement gastir qi voet, e pur ceo savise chescun daver tieux baillifs e aministrours com il entendra tiel fieu bien sauver; e sil cheet en damage par ascun fol serjaunt ou mauveis, recte ceo a son fol contract, quant il ne prist de li suffisaunte sieurte de tote loialte e descretion; e aussi le revers; car ver celi qe nad rien ne doune droit nul recovrir ne nul remedie forqe vengeaunce. Si ascun tel baillif neqedent soit qe ne voet loial acounte rendre a soun seignur, il est a ceo chaceable par bref dacounte, qest une accion mixte sil eit par quei il soit justiziable; e sil ne soit destreignable ne fieu tenaunt e defut soun seignur e ne voet acounte rendre, pur tele inobedience court laccion mixte en personel trespas, e solom le chaunge des natures des actions se change la fourme des brefs remedials. E coment qe tieus soient par contumace banissables a anes ou a james, nen est nul utlagable, enprisonable. Einz si ascun remeint en arreragez vers soun seignur, distinctez—sil eit dunt rendre soit li jugement al foer de dette atteinte, en autre case le revers.

Ch. XXVIII. *De Naifte.*

Une action mixte est founde sur j. personel trespas qe homme fet a autre quant len travaille franc homme pur enservir son sanc, e de li fere[1] vile condicion qest appelle de

[1] Supply *de*.

integrally to the nearest heir of the ancestor or his eldest daughter, and that an advowson should be alienated for term of years, or for life, or in fee tail; for the advowson of a church is, as it were, a spiritual thing, which can suffer no alienation that is not perpetual.[1]

As regards the contract of bailment and the administration of the goods and money of another, it is lawful for everyone to expend his goods wisely or to waste them foolishly if he pleases; therefore everyone should be careful to have such bailiffs and administrators as he believes can well preserve that fee; and if he falls into damage by reason of any foolish or wicked servant, he must set that down to his foolish contract, since he did not take sufficient security for a perfect loyalty and discretion; and *vice versa*, for against one who has nothing law gives no remedy save vengeance. Nevertheless, if any such bailiff will not render a loyal account to his lord, he can be driven to this by a writ of account—which is a mixed action—if he has anything whereby he can be made legally responsible. And if he is not distrainable and holds no fee, and thus flees from his lord and will not render account, by reason of this disobedience the mixed action becomes one founded on a personal trespass, and according to the change in the nature of the action there is a change in the form of the remedial writs. And although such persons may be banished for contumacy for a term of years or for ever, they cannot be outlawed or imprisoned. Therefore if anyone remains in arrear as against his lord, we must distinguish—if he has anything wherewith he can make payment, the judgment will be as for any other debt that has been recovered; but otherwise in the other case.

Ch. XXVIII. Of Naifty.

There is a mixed action founded on the personal trespass that one does to another when one strives to enslave the blood of a free man, and to make him of that vile

[1] A great deal of what is here said about advowsons is clearly opposed to the doctrines which prevail in king's court. By a *pure* gift is meant a gift in fee simple.

naifte. Ceste action est mixte en favour de franchise, car rerement se sustret nul del fieu soun seignur sil ne se cleime franc. Ceste action prent introduction par somonses e par attachement des fieus.

Naif nest autre chose qe serf. E tut soit qe totes creatures diussent estre franches solom lei de nature, par constitution neqedent e fet de hommes sunt genz e autres creatures enserves, sicom est de bestes en parcs, pesson en servours, e doiseax en cagez.

Servage de homme est une subjection issant de si grant antiquite qe nul franc cep nen purra estre trove par humene remembraunce. E le quel servage solom ascuns ist de la maleiceon qe Noe dona a Chanaan le filz Cham soun fiz e a sa issue, ou solom autres des Philistiens qe devindrent serfs par foer fet a la bataille qe se fist par entre David pur ceux de Isrel de une part e Golie pur les Philistiens dautre. E sicom autres creatures enserveis sunt gardables, aussi sunt serfs agarder de lur possessours. E de ceo sunt dist. E issi sunt genz serfs par devine lei e par droit de homme acceptie e par droit del canon conferme.

De Sem e de Japhet sunt issus les gentils Cristiens, e de ceux de Chaam les serfs qe les Crestiens poent doner e vendre si com lur autre chatel, mes nient deviser en testament puis ceo qe il serent ascreis[1] pur ceo qe adunc sont annex a franc tenement, e de ceux sunt puis estriz autres.[2]

Ceux sunt serfs qe sont engendrez de serfs e nez de serve, li quel qe se eit este en matrimoigne ou hors de matrimoigne. Ceux sunt aussi serfs qe sont engendrez de serfs e niez de franche en matrimoigne. E ceux sont serfs qi sont engendrez de franc home e de serve e nez hors de matrimoigne. Autre manere de serfs sont sicom ceux qi sont atteintz pur serfs par mi brefs de naifte, e lur issue pus.

[1] Corr. *astriers.*
[2] This seems to be corrupt. Read *e de puis sunt ascriz a terres* (?).

condition that is called naifty. This action is mixed in favour of liberty, for rarely does any man withdraw himself from the fee of his lord unless he claims to be free. This action commences by summons and attachment of the fee.

A naif is nothing else than a serf, and albeit that all creatures should be free by the law of nature, nevertheless by constitutions and the act of men, human beings and other creatures may be enslaved, as is the case with beasts in parks, fish in stew-ponds, and birds in cages.

Serfage in the case of a man is a subjection issuing from so high an antiquity that no free stock can be found within human memory. And this serfage, according to some, comes from the curse which Noah pronounced against Canaan, the son of his son Ham, and against his issue; or, according to others, from the Philistines, who became serfs by reason of the battle which took place between David on behalf of the Israelites of the one part, and Goliath on behalf of the Philistines of the other part. And as other creatures that are enslaved are to be preserved, so also serfs are to be preserved by their possessors, and therefore are they called serfs [*servi* a *servando*]; and thus are men serfs by divine law, and this is accepted by human law and confirmed by canon law.

From Shem and Japhet are descended the Gentile Christians, and from the sons of Ham the serfs, whom the Christians can give and sell like their other chattels, but not devise by testament after that they have become astriers,[1] for from that time forward they are annexed to the freehold and [thenceforth they are ascript to the land].

They are serfs who are engendered by a serf and born of a serf, and whether they be born in or out of wedlock. And one who is begotten by a serf but born of a free woman in wedlock is a serf. And one who is begotten of a free man but born of a bondwoman out of wedlock is a serf. There is another kind of serfs, viz. those who have been proved to be serfs by a writ of naifty, they and their issue after them.

[1] The *servus astrarius* has a hearth (*astrum*) of his own.

Serfs devenent francs en plusours maneres ascuns par baptesme, sicom est de ceux Sarrazins qe sont pris de Cristiens ou achatez e amenez par de sa la meer de Grece e tenent cum lur serfs ; ascuns devenent francs par le merc [1] sein pere cum est de ceux serfs qi sunt ordenez de evesqe de sudeacone en amount, mes tut seit cel issi suffert pur ceo ne perdra nul soun droit qe suire le vodra, testmoin le canon meismes.

Dautre part devient serf franc si soun seignur li grant daver franc estat si com heirs en succession de sanc ou sil preigne son homage pur fee, ou si soun seignur li gette de son fieu e [2] li doune sustenaunce, ou sil le met en comune prison, si ceo ne soit pur crim. Femme aussi allegge de la possession soun seignur a franc list nest mes chalengeable pur serve tut deveigne ele vedue. E si seignur soeffre soun serf respoundre en jugement sanz li sur veniale action ou jurer entre francz a foer de franc, sachant e saunz recleim del seignur, par tant ad il excepcion contre servage, sil ne recourt de son gree. Ou si seignur enfranchist son serf par manumission ou li relest e quitecleime quanqe en li est. E aussi devient serf franc par la defaute del seignur el bref de naifte si com par noun siute de son bref. E aussi par proeve de franc cep, ou des francs parentz. E aussi par le garanter soun seignur en court, e aussi par prescripcion de tens, e aussi par defaute de proeve. E aussi par le negligence le seignur, sicom par le demoere le serf en la citee ou es demeines le Roi par un an enterement, ou sil soeffre son serf a escient estre suiter dautri court, ou estre jurour en assises e aillurs entre francs.

Si ascun serf defut son seignur reclamant franc estat, pur ceo nel purra mie soun seignur prendre hors de son fieu

[1] *le mere Saint Piere*, 1642 ; *le mérite de Saint Piere*, Houard.
[2] Supply *ne*.

Serfs become free in divers manners: some by baptism, as are those Saracens who are captured by Christians or purchased and brought from beyond the Grecian sea and held as their slaves; others become free by the mark [?] of the Holy Father, as is the case with those serfs who are ordained by a bishop to the degree of subdeacon or upwards, but though this be suffered to be thus, no one is therefore to lose his right who will sue for it—witness the canon itself.[1]

Again, a serf becomes free if his lord grants that he may have a free estate such as heirs in succession of blood, or if his lord takes homage from him for a fee, or if his lord ejects him from his fee and does [not] give him sustenance, or if he puts him in the common prison, unless this be for a crime. A woman also who has gone from the possession of her lord into a free marriage bed is not claimable as a serf although she becomes a widow. And if a lord suffers his serf to answer in court without him in a venial action or to swear [as a juror] between free men as though he were free, and the lord suffers this knowingly and without putting in a claim, then the serf thereby acquires an 'exception' against the lord's action of naifty, unless of his own free will he returns to his lord. Or again, if the lord enfranchises him or releases and quitclaims him, so far as in him (the lord) lies, then he becomes free. Also he becomes free if the lord make default in a writ of naifty, by non-suit of his writ. Also by proof of a free stock, or of free parents. Also by the warranty of his lord in court, also by prescription of time, also by default of proof. Also by the negligence of his lord, as if a serf dwells in a city or on the king's demesnes for a whole year, or if the lord knowingly suffers his serf to be a suitor in another lord's court, or to be a juror in assizes or otherwise a juror among free men.

If any serf flies from his lord claiming to be of free estate, the lord may not for this capture him when out of

[1] See Dist. 54 and X. 1. 18.

pur remener, ne en son fieu pus lan, ou pus son bref de naiftie attame, einz appent al seignur qil le repurchace par cest action qest viscountal, e pledable en contie par somonses e par destresce de soun fieu. Car droit voet qe len use jugement e ne mie force.

Presentes les parties en jugement en countie e moustre laccion, li defendaunt purra dire en fourme dexcepcion qil est franc. E pur ceo qe franc estat est de plus haute nature qe servage par quei li viscounte nad poer a trier si haute excepcion par le bref de naifte, sunt tieux brefs e teles paroles suspendables iesqes a la venue des justices assignees a touz pleez en teles parties, si le Roi nen maunde autre chose, mes pur ceo ne sont mie tieus plez aiornable forqe de courte en autre.

La difference entre serfs e vileins.[1] E notez qe villeins ne sont mie serfs, car serfs sunt dist de garder sicom dist est. Ceux ne poent rien purchaser forqe al oes lur seignur, ceux ne sevent le vespre de quoi il servirent al matin, ne nul certein de services. Ceux poent les seignurs firgir, ceppir, enprisoner, batre e chastier a voluntie, sauve a euz les vies e les menbres entiers. Ceux ne devient capir,[2] fuir, ne adirer de lur seignurs tant cum iles troevent dunt vivre, ne a nul ne list de les recetter sanz le gree lur seignurs. Ceux ne poent aver nule maneres daccion ver nul homme saunz lur seignurs, forqe en felonies. E si tieux serfs tenent fieus de lur seignurs fet aentendre qil ne tienent forqe de jour en jour a la voluntie des seignurs, ne par nul certein de services.

Villeins sunt cotivours de fieu, demoranz en villnages upelande, car de vile est dit villein, de bours boriois, e de cite cetezein, e de villeins est mention fete en la chartre des franchises, ou est dist qe villein ne soit mie si griefment

[1] This stands in the margin. [2] This seems to be corrupt.

his (the lord's) fee to bring him back, nor capture him within the fee after the lapse of a year, or after his (the lord's) writ of naifty has been commenced; but the lord must recover him by this action, which is a vicontiel action, pleadable in the county court by summons and distraint of his fee. For the law requires that one should use judgment, and not force.

When the parties are present before the county court and the ground of the action has been set forth, the defendant may say by way of 'exception' that he is a free man. And because free estate is of a higher nature than serfage, and the sheriff has no power to try so high an 'exception' under the writ of naifty, the writ and pleadings will be in suspense until the coming of the justices assigned to hold all pleas in such parts, unless the king gives some command to the contrary; but, for all this, these pleas are only adjournable from one county court to the next.

The difference between serfs and villains. Note that villains are not serfs, for serfs are '*servi* a *servando*,' as has been said above. They cannot acquire anything save to the use of their lord; they do not know in the evening what service they will do in the morning, and there is nothing certain in their services. The lords may put them in fetters and in the stocks, may imprison, beat and chastise them at will, saving their lives and limbs. They cannot escape, flee, or withdraw themselves from their lords, so long as their lords find them wherewithal they may live, and no one may receive them without the will of their lords. They can have no manner of action without their lord against any man, save for felony. And if such serfs hold fees of their lords, it must be understood that they hold only from day to day at the will of their lords and by no certain services.

Villains are cultivators of the fee, dwelling in upland villages, for the villain gets his name from the vill, the burgess from the borough, the citizen from the city, and there is mention of villains in the Charter of Liberties, where it is said that a villain is not to be so grievously

amercie qe sa gaignere ne li soit sauve. Car de serfs ne fet ele mie mencion pur ceo qe il nunt rien propre qe perdre. Et de villeins sount lur gaigneries appell villenages.

E notez qe tenenz francs e quites de touz servages devenent enserver par contractz fetz par entre seignurs e tenaunz. E sunt de fieus plusours maneres de contractz, sicom de don, de vente, de change, e de ferme, qe touz se purrent fere a tens ou a james, e quitement sanz obligacioun e charge de servage ou ovesqe charge. E ces contractz sicome tuz autres se funt par escritz, chartres e monumenz, qe fere se soloient sanz monumenz par solempne tesmoinage al foer del contract de esposaille qe deit estre mireour a touz autres contractz. A queu foer les contractz avantdiz se firent par nos primers conquerous, quant les countez furent feoffez des countees, barons des baroniès, chevalers des fieus de chevaler, serianz de seriauntes, villeins de villenages, burgois e marchanz des burgages, dunt ascuns recoivent fieuz assouz de chescun obligacioun sicome pur service fet, ou en pure amoigne, ascuns a tenir pur homage e service al defens del reaume, e ascuns pur villeins custumez darer, aver, charier, sarclir, faucher, sier, tasser, batre,[1] teles autre manere des services, e ascun fois saunz reprise de mangier, e dunt plusours fins sunt troveez leveez en la tresorie, qe funt mencions de tieux services e villes custumeez fere, aussi bien cum autres de plus cortois services. E dunt, tut soit qe tiele gent veient[2] point de chartres ne monumenz, sil soient neqedent engetez ou destourbez de lur possessions a tort, droit les socourt par lassise de novele disseisine atenir en lestat qe devant, par si qil puissent aveuer qil savoient lur certein de services e dovenengues[3] par an, cum ceux qi auncestres avant ceux furent astrers de plus

[1] Supply *ou*. [2] Corr. *neient*. [3] Corr. *doveraignes* [*operationes*].

amerced that his wainage is not saved to him.[1] But of serfs there is no mention, for they have nothing of their own that they can lose. And the wainages of the villains are called villainages (*villenagia*).

And note that tenants who are free and quit of all services become enserfed by contracts made between lords and tenants.

And there are divers kinds of contracts respecting fees, such as gift, sale, exchange, lease, all of which can be made either for a time, or for ever, either free and discharged of all obligation and burden of serfage, or charged therewith. And these contracts, like all others, are made by writings, charters and muniments, and used to be made without muniments with solemn testimony [of eye-witnesses] like the contract of espousal, which ought to be a mirror for all other contracts. And it was after the likeness of this contract that the aforesaid contracts [concerning fees] were made by our first conquerors, when the counts were enfeoffed of counties, the barons of baronies, the knights of knight's fees, the serjeants of serjeanties, the villains of villainages, the burgesses and merchants of burgages, whereof some received fees absolved from all obligation in respect of past services, or in pure alms, some received fees to hold by homage and service for the defence of the realm, some to hold by villain customs to plough, lead loads, drive droves, weed, reap, mow, stack, thresh or to do similar services, and sometimes without receiving food for this, and whereof various fines have been levied which may be found in the treasury and which make mention of such services and vile customs, as well as of more courteous services. And therefore, albeit these folk have no charters or muniments, nevertheless if they be ejected or disturbed in their possessions wrongfully, the law succours them by the assize of novel disseisin to hold in the estate that they formerly had, provided that they can aver that they knew the certain measure of their annual services and works, their ancestors before them having been *astriers* for a long

[1] Magna Charta 1215, cap. 20.

long tens, *par* cas q*e* les disseisours nen furent seignurs. E de ceo se entremist seint Edward en sons tens denquere de totes les *gre*vaunces q*e* len feisoit a tel gaigneours outre lur droitz custumeez e enfist *gran*z vengeaunces. E pus *par* genz q*e* meins doutent pecche q*e* fere ne duissent, sunt plusours tieux villeins *par* torcenouses destresces chatieux [1] a fere a lur seignurs le *ser*vice de rechat de sanc, e plusours autres custumes volentrifs pur mener les en *ser*vage a lur poer, dunt lur remedie *par* le ne vexes enmorti *par* la negligence des Rois.

Ch. XXIX. De Somounses.

Cest title fet mencion de especiale somounses a la difference de somounce gen*er*al ou touz fieu tenaunz e autres devient venir solom la nature de la *crie* ; e dunt chescun del people poet fere la somounse par co*mmon*e criee, mes de cele somounce ne fet ceste ch*apit*re nient plus de mencioun.

Somonce especial est amiable a*m*monicion damendement de tort. E pur ceo q*e* nul nest tenu a respoundre a nuli action reale ne mixte avant somounces, fet a veoir queux pur*ren*t somondre, queux sont somonables, ou len est somonable, cu*m* loinz, a qi custages, quant de foiz, quèux purrent estre somenours, e quele somounce est renable.

Auctorite de fere somoundre unt touz ceux qi unt juresdiction.

Somonables sont touz ceaux as queux lei nel defent. Nul nest somonable pur *per*sonel pecchie ne nul q*e* nen est fieu tenaunt.

En touz lus nen est len mie somonable car nul nest somonable ne tenu a receivre somons hors del fieu del actour de la somounse, ne aillurs forq*e* el fieu appendaunt a cele court ou len deit respondre, ne en touz lus del fieu, einz soulement al tenement mis en la demande.

[1] Corr. *chases*.

time past—that is to say, if the disseisors were not their lords. And S. Edward in his day busied himself in this matter by making inquest as to all the grievances that were done to these cultivators in excess of their right customs, and he did heavy vengeance. And afterwards, by men who had less fear of sins that should not be done, many of these villains were driven by tortious distresses to do to their lords the service of blood-ransom [*merchetum*] and many other arbitrary customs to bring them into serfage and the power of their lords, and their remedy by the [writ] *Ne vexes* perished owing to the negligence of the kings.

Ch. XXIX. Of Summonses.

This title deals with special summonses as contrasted with the general summons which calls upon all fee-tenants and others to appear according to the nature of the cry; and such a general summons every one of the people can make by a public cry; but of this the present chapter will say no more.

A special summons is a friendly admonition for the amendment of a wrong. And because no one is called upon to answer to any real or mixed action before summons, we ought to see (1) who can summon, (2) who are summonable, (3) where one is summonable, (4) to what distance, (5) at whose cost, (6) how many times, (7) who can act as summoners, (8) what summonses are reasonable.

Authority to summon have all those who have jurisdiction.

Summonable are all those whom no prohibitory law excepts. No one is summonable for a personal sin, and no one who is not a fee-tenant.

It is not everywhere that one is summonable. One is not summonable or bound to receive a summons outside the fee of the author of the summons, nor elsewhere than within the fee belonging to that court in which one is to answer; nor is one summonable in every part of that fee, but only in the tenement that is demanded in the action.

Com loinz len est somonable. Ne mie hors del fieu de la court a la quel lem deit respondre.

A qi custages. As custages de ceaux qi en sunt les primers causes, forpris en jurees e enquestes aussi com doffice. Car nul franc home ne poet lem enserver de parer en jugement loinz a travailler a ses propres custages, tut voille droit qe chescun tenaunt soit obeissaunt a somonses son seignur.

Quan de foiz len est somonable. Forqe une foiz sur une cause, resomonse neqedent tient lu en cas.

Queux poent e deivent estre somenours. Somenour nestoit nul home estre sil ne voille de son gre, touz ceux neqedent poent estre somenours qi vodrent as queux lei nel defent ; femmes ne serfs, nenfanz, ne nul infams, ne nul qe nen est covenable en testmoignage, ne nul qe nest fieu tenaunt, ne poet estre bon somenour.

Renable somonce est quant ele est testmoignable par ij. loials francz tesmoigns veisins fete a la persone ou a la mesnee ou al tenement contenu en la demaunde, ovesqe garnissement del jour, lu, partie, juge e de laccion, e renable respet al meins de xv. jours de porvir respons e de parer en jugement. En jurees neqedent ne enquestes ne covendra mie pleinement tant de respit.

Ch. XXX. De Essoignes.

Essoigne est excusation de defaute par ascun desturbaunce encheminant ver la court, e ceo aussi bien pur lactour cum pur le defendaunt. Le droit de chescune essoigne est qe la cause de la destourbance soit enroullee en le non del essoneur, issi qe ci la partie adverse ou soun attournee ou essoneour voille la cause traverser, a ceo est recevable, qe si ele soit trovee fausse, adunqe feit lesoigne tornable en une defaute.

Excuser se purrent touz ceux as queux droit nel defent.

To what distance is one summonable? Not outside the fee of that court in which one is to answer.

At whose costs? At the cost of those who are the prime cause of the summons, unless the summons be to serve on a jury or inquest, such as an inquest *ex officio*, for no free man can be compelled to appear in court or to travel far at his own costs, though the law wills that every tenant be obedient to the summonses of his lord.

How many times is one to be summoned? But once for one cause, though in some cases there may be a re-summons.

Who can and ought to act as summoners? No one can be compelled to act thus save of his own free will. All nevertheless may be summoners whom the law does not prohibit if they will so to be; but women, serfs, infants, infamous persons and those who cannot be witnesses, and those who are not fee-tenants, are not good summoners.

A reasonable summons is one testifiable by two free and lawful neighbour witnesses, and made to the person in question or to his family or on the tenement that is demanded in the action, with notice of the day, place, party, judge and action, and a reasonable respite of at least fifteen days wherein to provide an answer and to appear in court. But a summons to serve on a jury or inquest need not give so long a respite.

Ch. XXX. Of Essoins.

An essoin is the excuse for a default which is due to some hindrance in the way to court, and this excuse may proceed from the plaintiff or the defendant. The law requires in every essoin that the cause of the hindrance and the name of the essoiner shall be enrolled, so that the adverse party or his attorney or essoiner may be received to traverse the alleged cause of the essoin, and if the allegation be found to be false, then the essoin counts as a default.

All those may excuse themselves who are not forbidden to do so by law.

Excuser ne se poent nul defendaunt en personels accions, ne nul apres defaute, ne a nul present en court, ne en scire facias, ne en venire facias, ne en recordari facias loquelam, ne en amesurement de pasture, ne apres ceo qe parties se serrent assentu en jugement, tut ne viegnent jurours, nen cas ou li plaintif nad mie trove sieurte a suire, ne ou latturne est assoneie, ne ou len ad attornee en court si andeus [1] ne soient essoneiez, ne en nule somonse nest testmoignee, ne apres essoigne nient garantie, ne a celi qe point ne fu nomee el brief, ou en la pleinte forpris en garanties, ne nul qe est resomons en mort dauncestre e dreint present, ne quant le jour nest venu, ne ou lessoneour vient trop tart, ne nul qe adversaire est mort ou ascun de ces parceners, ne celi qest aiorne de jour en jour, ne ministre le Rei tant cum ministre, ne celi a qi est maunde qil viegne sil voille. Nul essoigne nest allouable si ele ne seit ordeneement gette, ne a enfant dedenz age, ne a nul qi est garde, ne a plusours eanz j. droit, si la cause se diverse.

Essoneours purrent estre touz ces as queux droit nel defent.

Defendu est a femmes, a enfanz, a serfs e a touz ceux qi sunt engarde, as arrages, as escomengez, as foxnastres, as juges e as parties en meme les plez, a essoneours autre foiz nient garanties, ou atteinz de faus delai, a criminale gent, e a ceux qi ne sunt a la fei crestiene, ou a la foi le Roi ; qil ne soient essoneours.

Deus maneres de essoignes sont principalment. Lune del service le Roi e lautre de destorbaunce. La primere est devisable, ou del service le Roi celestre ou del Roi terrestre. Del Roi celestre en iij. maneres, ou pur le

[1] Corr. *ambideus*.

The defendant in a personal action cannot essoin himself, nor one who has already committed a default, nor one who is present in court, nor [the defendant] in *Scire facias* nor in *Venire facias*, nor in *Recordari facias loquelam*, nor in an action for admeasurement of pasture, nor after the parties have assented to judgment, albeit the jurors have not come, nor where the plaintiff has not found surety for the prosecution, nor where the attorney is essoined, nor where one has an attorney in court unless both are essoined, nor where no summons has been testified, nor after an essoin that has not been warranted, nor can one not named in the writ or in the plaint essoin himself, except in the case of a warranty, nor one who has been resummoned in a *Mort d'ancestor* or a *Darrein presentment*, nor when the day [for appearance] has not yet come, nor when the essoiner comes too late, nor can one essoin oneself when one's adversary or one of his parceners is dead, nor if one has been adjourned *de die in diem*, nor can a minister of the king essoin himself *qua* minister, nor one who has been told to come if he pleases. No essoin is allowable if it be not duly cast, nor is it allowable to an infant within age, nor to any who is [within] ward, nor to several who have one right unless there be but one cause for the essoin.[1]

Anyone to whom this is not forbidden by law, may be an essoiner.

This is forbidden to women, infants, serfs and all who are within ward, to madmen, to excommunicates, to natural fools, to those who are judges or parties in the cause, to essoiners who on some former occasion have failed to produce their warrant or been attainted of a false delay, to criminals, to those who are not in the faith of Christ and of the king:—such as these cannot be essoiners.

There are two chief kinds of essoins. One is the king's service, the other a disturbance. (1) The first kind is divisible, for the service may be that of the heavenly King or of the earthly. One may essoin oneself as being in the heavenly

[1] Cf. *Hengham Parva*, cap. 1.

general passage de touz croizez a la terre de Ierusalem, cele essoigne nest mie autrement aiornable mes qe les parties senvoissent sanz jour, e se eide lactour par resomonse al revenir del deffendant. Ceste essoigne nest jammes allouable as actours, ne al defendant renablement somons avant son partir de sa meeson ver soun pelrinage, ne a nul en personel accion, nen autre forqe en ple qe touche heritage meu par bref de droit overt, mes nient en doweire ne de burgage. Lautre essoigne del service le Rei celestre est de commun pelrinage doutre meer en la terre seinte. E cele print respit par j. an. Cele essoigne ne tient lu forqe solom ceo qe lautre fet. La tierce de pelrinage de decea la meer de Grece sicom a Roume, ou a seint Jage. E cele print respit par demi an. E sunt cestes essoignes garantizables as proscheins courtz suanz les termes aiornees. Apres resomonses tient lu la commune essoigne del mal de venue, e ausi apres le terme de leniornement, mes jammes ne tient lu cele comone essoigne avant les iij. essoignes avantditz. E lessoigne del service le Roi terrestre en ij. maneres. Lune sicome est de ceux qi le servent come soudoiers, com mesuenges, ou com ministres ; e cele essoigne ne print respit forqe de court en court, ou de comun jour en comun jour, al foer de comun essoigne, si ele nesoit garantie a la proschein court par le bref le Roi si iert tornable en defaute. Lautre est de ceux qi servent le Roi par obligacion de lur fieus pur le defens del reaume, e cele ne receit nul jour, einz fet adire al pleintif qil sen voist sanz jour e face resomondre la parole destre en meme lestat quant son adversaire serra retornee.

Cestes derreins essoignes sunt allouables en ples

King's service in three ways: (*a*) on account of a general passage of all crusaders to the land of Jerusalem, and this essoin is adjourned in no other way than this, that the parties shall go without day, and then when the defendant returns the plaintiff can have recourse to a resummons. This essoin is never allowed to plaintiffs nor to a defendant who has received a reasonable summons before he leaves his house for the pilgrimage, nor is it allowed in a personal action, nor in any other action that does not concern the inheritance and which is not begun by a writ of right patent; nor is it allowed in an action for dower nor in an action for a burgage. (*b*) Another essoin for the service of the heavenly King is for a general pilgrimage beyond sea to the Holy Land. And this causes a respite for one year. This essoin is only admissible where the previous essoin [the crusader's] would be admissible. (*c*) The third is that for a pilgrimage to some place on this side the Grecian sea, as to Rome or to S. James [of Compostella]. And this causes a respite for one half year. And these essoins must be warranted at the next court after the terms to which they are adjourned. After resummons, there may then be the common essoin *de malo veniendi*, and so there may be after the term of the adjournment, but this common essoin can never be made before any of the three essoins just mentioned. (2) One may essoin oneself because of the service of the earthly king in two ways. (*a*) The first case is that of those who serve as soldiers, or messengers, or ministers; and this essoin is respited only from court to court or from one *dies communis* to the next, like the common essoin [*de malo veniendi*], and unless at the next court it is warranted by the king's writ, it is reckoned as a default. (*b*) The second case is that of those who serve the king being bound to the defence of the realm in respect of their fees; and in this case no day is given, but the plaintiff is told to go without day and to have the suit resummoned in its present condition when his adversary shall have returned.

These last-mentioned essoins are allowed to the

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somonables as pleintifs e as defendanz, forpris en doweires dunt femme rien nad, quare impedit, drein present; ne a femmes, ne a enfanz, ne a celi qi sest pris a langour en lessoigne de mal delist, ne a fol nastre, ne a sourd e mut, ne arragiez, ne a nul qi est en garde, ou qi nest franc de sei, ne a nul atturne tant cum attorne, ne ou lessoneour conust en jugement la cause estre fausse ou qe tant vaut, ne apres nule cape ne apres destresce fete de fieu.

Apres lessoigne del service le Roi tient lu lessoigne del mal venue mes nemie le revers.

Lessoigne de destourbaunce est devisable ou de maladie ou dautre destourbaunce, cum est de ceux qi sunt pris de enemis cheminant ver la court, e issi destourbez, ou par ponz brisez ou euues desruees, ou par tempeste ou dautre renable destorbaunce, qil neunt poer de parer en jugement al jour.

Lessoigne de destourbaunce de maladie est devisable:— ou de langour qest appelle del mal delit e cele print respit par j. an, ou de maladie passant e cele ne print respit forqe al foer de lessoigne commune e cestes essoignes de destourbaunce sont essoignes del mal devenue. Ceste essoigne tient lu apres chescun somonse e resomonse generale ou especiale mue sur ple, forpris a jurours e a ceux qi sont somons pur comun prov. Mes des aiornemenz fet a destincter; car en eire des justices est lenjornement le iij. jours ou le iiij., ou plus ou meins, solom ceo qe les lieus sunt proscheines ou lointeins, e as foreins prent cele essoigne respit par xv. jours al meins.

Lessoigne de maladie passant tient la [1] devant lessoigne del mal delit, e aussi apres lan de la langour. E ou ele tient lu devant apparaunce tient lu e apres, forprises iiij. assises, e par la ou ele tient lu es accions tenent lu es garanties.

[1] Corr. *lu*.

plaintiffs and the defendants in actions which are commenced by summons, save in *Dower unde nihil habet*, *Quare impedit*, and *Darrein presentment*; they are not allowed to women, nor to infants, nor to one who has essoined himself *de malo lecti* and relied on his *languor*, nor to a born fool, nor to the deaf and the dumb, the lunatic, nor to any who is in ward or is not *sui juris*, nor to an attorney *qua* attorney, nor where the essoiner confesses in court that the excuse is false or what is tantamount to that, nor after a *Cape*, nor after a distress against the fee.

After an essoin *de servitio regis* there may be one *de malo veniendi*, but not *vice versa*.

Essoins by reason of disturbance are divisible thus: they are either for a malady or for some other disturbance, as, *e.g.*, if one who is on his way to court be captured by enemies, and be disturbed thus, or by broken bridges, floods that are out, or by tempest or other reasonable disturbance, so that he cannot appear in court on the proper day.

Essoins for hindrance by malady are thus divisible: either they are for a *languor* (a bed-sickness), and these are called *de malo lecti* and are respited for a year; or they are for a passing malady, and these are merely respited like the common essoins for disturbance which are called *de malo veniendi*. This essoin is in place after every summons and resummons, general or special, in the plea, save in the case of jurors and those who are summoned for the common good. But as to the adjournments we must distinguish; for in the eyre of the justices the adjournment is for three or four days, more or less, according as the place in question is far or near, and in the case of foreigners this essoin causes a respite for fifteen days at the least.

The essoin for a passing malady may precede the essoin *de malo lecti*, and it may also be cast after the year of *languor*. And when it holds good before appearance it holds good after appearance, except in the case of the four assizes, and if it will hold good in an action it will hold good in a voucher to warranty arising out of that action.

Ceste commone essoigne nest allouable es cas avantdiz, ne forqe une foiz puis lacord de parties en juree ou enqueste, ne apres ceo qe parties se averent assentu de venir sanz essoigne, ne la ou maundie est a evesqes qe il eit ou face venir tel son clerk, ne la ou plusours cleiment par j. droit ou soient tenanz de j. droit, ne a homme e a sa femme ne a parceners, ne a plusours e j. heir forqe al foer de un soule persone. Mes si ascun parcener moerge sanz heir de sei apres bref purchace e attaimee, le bref iert par tant abatable, pur ceo qe al jour de la date nout lactour nul action vers les autres parceners vifs quant a la portion en crue. Ceste comune essoigne tient lu aussi bien a enfanz par la ou il sunt enpledez de lur purchaz, cum as genz de pleine eage. E sicom ele est allouable al tenant, aussi est ele al garaunt, ou nule langour nest a jugee. Cest essoigne est allouable de jour en jour solom communs aiornemenz en bref de droit, jesqes atant qe langour e soit a juge, si li tenant ne se leve avant de sa langour. Lever neqedent ne purra nul en tiel cas, si non del coungie del actour, ou del comandement le Roi si lactour ne li voudra congie doner.

Ceste essoigne tient lu el bref de droit overt mandie al seignur de fieu, e el bref clos de fieu tenu en chief de Roi, e el bref de custumes de services apres ceo qe li deforceour avera respondu e dit coment bataille ou grant assise e purra joindre.

Lessoigne de mal delit est getable en court par ij. amis ou messages en lu de essoneours quant la maladie se court en langour. Ceste essoigne ne tient mie lu a actour. E pus langour a jugee, est ele aiornable par j. an de respit a la tour de Londres. Langour ne tient mie lu en nul bref de droit apres apparaunce forqe par la ou bataille purra joindre ou grant assise

This common essoin is not allowable in the aforesaid cases, nor can it be allowed more than once after the parties have agreed upon a jury or inquest, nor after the parties have agreed to appear without essoin, nor when a bishop has been told to produce or cause to appear such an one his clerk; nor again where several persons claim in one right or are tenants in one right, nor to a man and his wife, nor to parceners; nor again to several persons who together make one heir, for here they must behave as if they were but one person. But if one of several parceners die without heir of his body after writ purchased and commenced, the writ is abateable for that reason, because at the date of the writ the plaintiff had no action against the other parceners who are still alive in respect of the portion that has now accrued to them. This common essoin is available to an infant who is impleaded concerning what he has acquired by purchase, as well as to one of full age. And as it is allowable to the tenant, so also is it allowable to the warrantor, where no *languor* has been adjudged. This essoin is allowable from day to day, according to the common adjournments in a writ of right, until the alleged *languor* is adjudged, unless the tenant arises from his bed before the adjudication of *languor*. But in such a case no one is entitled to leave his bed without the permission of the plaintiff, or, if the plaintiff will not give this permission, then by the king's command.

This essoin is allowable in a writ of right patent sent to the lord of the fee, and in the writ close that is used where the tenant holds in chief of the king, and in the writ of customs and services so soon as the deforceor has answered and pleaded in such a way that battle or a grand assize may be joined.

The essoin *de malo lecti* must be cast in court by two friends or messengers in the place of essoiners when the malady has turned to a *languor*. This essoin is not allowed to a plaintiff. When a *languor* has been adjudged, a day one year thence is given for appearance at the Tower of London. There can be no *languor* in a writ of right after appearance, save where battle may be joined or the grand assize.

Cest essoigne de mal del lit niert jammes allouable a nul attorne, ne a nul garant einzces qil eit garantie, ne devant la commone essoigne gette pur le tenaunt, ne a nul apres langour agardee e tenue sanz lever, ne en eire des justices, ne es brefs de quo jure, ne de renables devises, ne de quo warranto, ne de custumes e des services einzces qe la court seit certefie qe bataille ipuisse joindre ou grant assize.

Lessoigne de maladie supprenant est appele del mal de la vile, e cele tient lu en cas ou ascun qe fist profert [1] le primer jour en jugement est suppris de maladie en la ville sodenement qil ne poet lendemein retorner en court. Cele essoigne est getable le secund jour par j., mes le tierz jour par autre, e le quart par le tierz. En quel cas appent al juge a fere receivre les attornez de tieux malades, mes ceste essoigne ne tient mie lu forqe par la ou lessoigne del mal delit tient lu.

Ch. XXXI. De Atturnez.

Avant parole mue en court par essoigne, par attachement ou par apparaunce des parties nest nul recevable pur atturnie, nient plus qe parole est remuable hors de court requis [2] en plus haute court ou la pleinte ou le bref nestoit mie attamee. Car nul ne est recevable pur attorne en parole qe fu, nen parole resera [3], einz soulement en parole qest pendaunt. E si ascun ert fet attorne ceo parole pendant en countie ou aillours, ou ele est attamee par bref le Roi, e cele parole soit puis remue en plus haut court pur cel remuement nest mie latturne remue ; ne nul attorne nest remuable sanz celi a qi attornee il est qi veignt en court en propre persone e le remue, e si noun en cas ou len ad generals attornez, car generals attornez poent mettre especialx e remuer. Ne nul poet rescevire attorne apres

[1] Corr. *fust present* (?). [2] Corr. *jesques*. [3] Corr. *qe serra*.

This essoin *de malo lecti* is never allowed to an attorney, nor to a vouchee until he has warranted, nor before the tenant has cast the common essoin, nor after a *languor* has once been adjudged and observed without any arising, nor in the eyre of the justices, nor in writs of *Quo jure*, nor in writs *De rationabilibus divisis*, nor in *Quo waranto*, nor in *Consuetudines et servitia* until the court is certified that battle may be joined or the grand assize.

The essoin of supervenient malady is called *de malo villae*, and this has its place where one who appears in court on the first day is surprised by a sudden malady which comes upon him in the town in which the court is, so that he cannot appear in court on the morrow. This essoin may be cast on the second day by one essoiner, on the third day by another, on the fourth by a third. And in this case it is for the judge to receive the attorneys of those who are thus taken ill. But this essoin is only permissible in those actions in which an essoin *de malo lecti* will lie.

Ch. XXXI. Of Attorneys.

Before the suit has been moved in court by essoin or attachment or appearance of the parties no one can be received as an attorney; this is no more possible than that a suit should be removed into a higher court before the plaint or the writ has been entered; for no one can be received as an attorney in a plea which has been, or in a plea which shall be, but only in a plea which is pending. And if anyone be made an attorney while the plea is pending in the county court or elsewhere where it has been commenced by the king's writ, and afterwards the suit is removed into a higher court, the attorney is not removed by this removal; and no attorney is removable, unless the person whose attorney he is comes into court in proper person and removes him, or unless it be where one has a general attorney, for a general attorney can appoint and remove special attorneys. And no one can receive an attorney after the suit has been commenced, save the king,

parole attame forqe le Roi ou autre garanti par especial bref, si noun en presence des parties.

Attornez poent estre touz ceux, as queux lei nel soeffre. Femmes ne poent mie estre attornez, ne enfanz, ne serfs, ne nul qi est engarde ou autrement nient franc de sei, ne nul criminous, ne nul escomenge, ne nul qe nest a la fei le Roi, ne nul qe ne porra estre contour, ne nul en nule personele accion, ne en acounte, ne en naifte. Actours neqedent poent aver attornez en personels accions. Ne apeser ne rendre en jugement ne poet nul par atturnee, einz deseisist son client quant il le fet.

or another who is warranted thereto by special writ, unless it be in the presence of the parties.

All those who are not prohibited by law may be attorneys, but the law will not suffer women to be attorneys, nor infants, nor serfs, nor any who are in ward or who otherwise are not *sui juris*, nor criminals, nor excommunicates, nor those who are not in the king's faith, nor one who cannot be a pleader, nor can there be an attorney in personal actions, nor in account, nor in naifty. But plaintiffs may have an attorney in a personal action. And no one can make a concord or a surrender in court by attorney, and an attorney who does this disseises his client.

LIBER III. DE EXCEPCIONS.

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BOOK III. OF EXCEPTIONS.

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LIBER III.

DE EXCEPCIONS.

Ch. I. De Excepcions.

Entendue la demonstraunce del pleintif bosoigne a la partie adverse de bien respondre. E pur ceo qe genz ne sevent mie commonement totes les excepcions qe valent en respons, sunt countours necessaires qe sachent les causes avancer e defendre, par les riules de lei e des usage de roiaume, e plus sunt necessaires en endetemenz e appealx de felonie defendre qe en causes veniales. E pur eider nostre remembraunce qe chescun jour decline en obliaunce, fet adire quoi est excepcion, de sa devision, e del ordre deccepper, car assez se veut [1] pur coupable qe ne respound en jugement ou malement respound ou nient suffisalment; example si ascun vouche agarant jugement passie, tiel respons nest nient plus allouable sil ne die quel an, ou, e par devant queux juges li jugement passa, cum sil rien ne deit pur respons. E issi dautre cas.

E tut soit respons necessaire chescun neqedent nest mie dumement recevable en respons, car ascuns sunt recevables a respondre sanz tutors en totes accions, e ascuns nient si en felonies noun, e ascuns ne sunt recevables a respons sanz tutours en nul cas.

Respondre sanz tutour poet chescun a qi droit nel defent.[2] Defendu est as femmes mariez a respondre sanz lur mariz. Mes destinctez des cas: car si ele est de tenz [3]

[1] Corr. *car ascuns se rendent* (?). [2] *defent* repeated in MS. [3] Corr. *dedenz*.

BOOK III.

OF EXCEPTIONS.

Ch. I. Of Exceptions.

When the declaration of the plaintiff has been heard, the adversary is concerned to make a good answer. And because folk do not generally know all the 'exceptions' which can be used by way of answer, pleaders are necessary who know how to set forth causes and to defend them according to the rules of the law and the usage of the realm, and they are the more necessary for the defence in indictments and appeals of felony than in venial causes. And to aid our memory which is always slipping into oblivion, we must say what an exception is, and how exceptions are divided, and of the order in which they can be put forward, for some folk make themselves guilty by not answering in court or answering badly or insufficiently. Thus, for instance, if one vouches to warranty a previous judgment, such an answer, if he does not say in what year, where, and before what judges the judgment passed, is no more admissible than if he gave no answer at all. And so in other cases.

And albeit an answer is necessary, it is not everyone who can be properly received to make answer, for some may be received to answer without tutors in all actions, and others only in felonies, and others cannot answer without tutors in any case.

Everyone may answer without a tutor who is not forbidden by law. Married women are forbidden to answer without their husbands. But we must distinguish:

le eage de xxj. an, ele ne respondra en nul cas sanz soun mari ne recevable nest forpris en cas ou sa deheriteson ou qe tant vaut piert par la negligence ou la malice del mari ; e si ele soit de plener eage adunc respondra soille en mortex cas e felonies. E aussi est de genz [1] de religioun e de serfs e de touz ceux qi sunt en garde e ne sunt mie de lur lige poer.

Ch. II. Que est Excepcion e del ordre dexcepcion.

Excepcion est un [2] e respons pur delaier ou destrure accion. E sunt ij. maneres de excepcions, dilatoires e peremptoires.

Lordre de excepper est tiel qe la peremptoire est el plus haut degree. Car de la dilatoire poet lem aver recours a la peremptoire, e nient le revers. E des dilatoires sunt ascuns principales e ascuns secundaires, e des secundaires nest nul recours as principales. E solom lur degres sunt eles ici mises en partie, en eide de nos remembraunces. E ascuns excepcions sunt encontrables de replicacions, e teles de triplicacions, e issi outre requis [3] a tant qe verite seit clarifie en proces de plez par unt lem purra surement descendre a clers jugemenz.

Voucher agarant ne tient mie lu en personels accions, tut seit qe averremenz par recorz par monumenz e testmoines vaillent.

Ch. III. Excepcions Dilatoires.

Excepcions dilatoires sunt plusours, dunt le primer est al juge, e ceo en plusours maneres. Dunt lune est del noun poer le juge, e ceo poet estre en ij. maneres pur les ij. maners de juresdiccion, ou pur ceo qe le Roi ou son juge delegad

[1] *de genz* repeated in the MS.
[2] *chose allegue pur respons.* 1642 and Houard. [3] Corr. *ieques.*

for if the married woman be within the age of twenty-one, she shall in no case answer without her husband, and is not receivable except it be that her disherison or what is equivalent thereto (is imperilled) by the negligence or malice of her husband; but if she be of full age she must answer alone in mortal cases and felonies. And so it is with men of religion and with serfs and with all those who are in ward and are not *sui iuris*.

Ch. II. What is an Exception and of the order of Excepting.

An exception is something alleged by way of answer in order to delay or to destroy an action.[1] And of exceptions there are two kinds, dilatory and peremptory.

The order of excepting is this, that peremptory exceptions are the highest, for from a dilatory one may have recourse to a peremptory, but not *vice versa*. And of the dilatory some are principal and some secondary, and from the secondary one cannot have recourse to the principal. And they are here stated in part according to their various degrees in aid of our memories. And some exceptions are encounterable by replications, and these by triplications, and so on until the truth is clarified in the process of pleading so that one may securely condescend to a clear judgment.

There can be no voucher to warranty in a personal action, though averments by records or by muniments and evidence are available.

Ch. III. Dilatory Exceptions.

Dilatory exceptions are of divers kinds. The first is to the judge, and this may be of various kinds. One is to the power of the judge, and of this there are two kinds as there are two kinds of jurisdiction. One may, on the one hand, except to the king or his judge delegate that he

[1] In this instance the reading of the old edition adopted by Houard seems much better than that of the MS.

nad poer de conustre en la cause, sicom est de la *per*sone de clerc p*ur* privilege del eglise ; ou pur ceo q*e* li juge ordeneire nad poer a conustre pur la foreinetie ; car nul nad poer a conustre de fet fet hors de sa juresdiccion, ne nul en lu fr*an*chie de fet fet en gueldable, ne les rois ne ceux de j. co*un*tie ou de une t*er*re de fet fet en autre.

Ch. IV. Del Excepcion de Clergie.

Par p*ri*vilege de clergie, cum si clerc ordene mene en court devant lai juge e p*ur* respondre de p*er*sonel trespas e nomeement en cause c*ri*minale e mortele die qil est clerc, li juge ne poet plus avant conustre. Car leglise est si enfr*an*chie q*e* nul lai juge ne poet aver conussance en clerc tut le voisist clerc conustre pur son juge, en tiex cas est s*an*z delai deliv*er*able a soun ordenaire. Por doner neqedent acciouns as actours vers les accessoires en appeax e enditementz, apent q*e* li juge tantost enquerge de son office p*ar* se*re*menz de p*ro*des hom*m*es en la p*re*sence del clerc, li quel il soit coupable ou noun. E sil soit trovie coupable adunc est liv*er*able a son ordenaire sanz nule difficultie, e lactour sue tantost vers les accessoires en la court le Roi e en crestiene court ver le clerc, e li clerc ap*re*s due purgacioun rehiet touz ces biens moebles e fieus sanz difficultie.

Ch. V. Replicacion a Bigamie.

Excepcion de clergie est ascuns foiz encont*r*able p*ar* replicacion de bigamie en ceste manere, Sire il ne deit joir le benefice de cel p*ri*vilege, car il ad forfet par vice de bigamie cu*m* cil q*e* ad espose vedue ou plusours fem*m*es.

has no power to entertain the cause; such is the case where the party is a clerk, and this by reason of the Church's privilege; or, on the other hand, one may except that the judge ordinary has no power to entertain the cause because it is foreign; for none has cognisance of a deed done outside his jurisdiction, and no one within franchise has cognisance of what is done in the geldable, and no king or men of one county or one land can have cognisance of what is done in another county or land.

Ch. IV. The Exception of Clergy.

[An exception may be based] on the privilege of clergy, as if an ordained clerk brought into court before a lay judge to answer for a personal trespass and more particularly in a criminal and mortal cause, says that he is a clerk, the judge can take no further cognisance of the matter; for the Church has this franchise that no lay judge can have cognisance of a clerk, albeit that clerk himself is willing to acknowledge him as judge; and in such a case [the clerk] is to be delivered without delay to his ordinary. Nevertheless in order that plaintiffs may be able to proceed in their appeals and indictments against the accessories, it is right that the judge should at once inquire *ex officio* by the oath of good men in the presence of the clerk, whether he be guilty or no; and if he be found guilty, then he ought to be delivered to his ordinary without any difficulty, and the plaintiff can at once sue against the accessories in the king's court and against the clerk in court Christian; and the clerk, after due purgation, shall have back again all his movables and fees without difficulty.

Ch. V. The Replication of Bigamy.

Sometimes the exception of clergy may be encountered by the replication of bigamy—in this manner: 'Sir, he ought not to enjoy the benefit of this privilege, for he has forfeited it by the vice of bigamy, being one who has espoused a widow

E notez qe matrimoigne est un ordre de loiale assemble de homme e de femme par lassent [1]de bone gent; e sicome[1] de dieu e de bone gent crestiene e de deitie e de humanite est fete unitie nient devisable, issi fet matrimoigne, e solum tiel unitie estoit tiele assemble trovie, e pur ceo ne poet nul remeindre en la unitie qi se print a pluralite, einz de pluralite sourt celi vice de bigamie le quel vice retret clercs a laite.

E notez qe bigamie se poet fere en ij. maneres, lune par pluralite dever femmes cum qi espouse ij. femmes ou plus, lune apres lautre mort, ou une vivant lautre; lautre est par pluralite de hommes, come est de femme qe se part de unitie sicom est de vedue qe se lest esposer a autre homme, le quel qe la veduetie veigne par mort de marit, ou de celebracion de devorz. E pur ceo appent adire en que point clerc est bigamus, si qe la bigamie soit triable en laie court. Si jurees neqedent dient qil ne sievent, adunqe appent cele certificacion venir del ordenaire al maundement le roi, sicom en cas de matrimoigne dedit.

Dautre part est clerk encontrable dautres replicacions, com sil est conu pur murdres e lierre notoire, e de tiele condicion qe leglise nel deit garauntir ensuiant la pees le roi.

Ch. VI. Al Poer le Juge.

Al poer le juge se purra li defendant eider par autres excepcions dilatoires en ceste manere—Sire jeo demant la veuue e la oie de la commission par qi vous clamez juresdiction sur mei. Qe si li juge ne la deigne[2] ou ne puisse moustier nestovera nul a conustre pur juge delegat.

Moustre le poer, unqore purra il dire issi—Sire jeo ne dei mie a cele commission obeir pur ceo qele ne fet mie mencion de la cause dunt jeo su tret en jugement, ou nient de tel

[1–1] Omit these words, and transfer *e sicome*, which should follow *crestiene*.
[2] *juge la deny*. Houard.

or several wives. Note that matrimony is a kind of lawful union of man and woman by the assent of God and of good Christian folk, and as of deity and humanity there has been made an indivisible unity, so it is in matrimony, and this union of man and woman is after the form of the unity of deity and humanity, and therefore none can remain in this unity who betakes himself to plurality, but from plurality there ariseth this vice of bigamy, which drags down clerks to the level of the laity.

And note that bigamy may be committed in two ways: first, by a plurality of women, as if one espouses two or more women, one after the other's death, or one while the other is alive; secondly, by a plurality of men, as is the case of a woman who departs from unity, as, for instance, a widow who allows herself to be espoused to a second husband, whether her widowhood arises from the death of her husband or from a divorce. And, therefore, it is necessary to allege in what manner the clerk is bigamous, so that the bigamy may be tried in a lay court; but if the jurors say that they are ignorant, then a certificate about this point must come from the ordinary at the king's command, in the same manner as if a marriage had been denied.

And then, again, a clerk may be met by other replications, as if he be known for a notorious murderer and robber and a man of such a kind that the Church ought not to warrant him out of a respect for the king's peace.

Ch. VI. [*Exceptions to*] *the Power of the Judge.*

A defendant can aid himself by other dilatory exceptions against the power of the judge in this manner:—'Sir, I demand sight and hearing of the commission by which you claim jurisdiction over me.' And if the judge refuses or cannot show the commission, no one need acknowledge him as a judge delegate.

When the commission has been shown, then he may still say, 'Sir, I have no need to obey this commission, for it makes no mention of the cause in respect of which I am

point dunt vo*us* eiez poer aconoistre de tiel point, ou porce q*e* ele est viciouse, e ceo purra estre en divers maneres, cu*m* si ele ne soit seale del seal le Roi de sa chancellerie, car al p*ri*vee seal le Roi ne al seal del escheqer ne autre seal forq*e* soulement al seal qest assigne destre conu de la co*mmon*altie de poeple, e nomeement en jurediccions e brefs originals, nestoit a nul obeir e leis e usages del Reaume si noun pur soulement le Roi. Ou ele purra estre viciouse pur le seal contrefet ou autrement faussie, ou por ceo q*e* li Roi nest mie nomie el bref ou nient testmoin del bref e il vient[1] hors de son Reaume ne engarde, ou p*ur*ceo q*e* li bref contient la somonse ou la cit*ation* ou est[2] p*er*sonele, ou attachement ou laction est reale ou mixte, ou pur ceo q*e* le seal nest mie ferm al parchemin, einz le purra le remuer e remettre a volu*n*tie, ou pur ceo q*e* li bref fu trop tard purchace ou trop tost, ou p*ur*ceo qil iad rasture ou entreligneire ou dev*er*sete de meins e de note ou faus latin, ou pur ceo q*e* li bref est escr*i*st sur papir ou sur p*ar*chemin defendu, ou pur defaute trovie el brief sicom de omission ou t*ra*nsposicion de mot, sillable ou de clause sicom est de brefs abatables, ou pur ceo q*e* le Roi morust av*ant* le bref attamee, ou p*ur* ceo q*e* li poer est reappele, ou p*ur* ceo q*e* li bref supposa faus le jour de la date, ou p*ur* ceo q*e* la com*m*ission voet associacion de hom*m*e nient p*r*esent, ou pur ceo q*e* li bref nestoit unqes sealie, ou p*ur* ceo q*e* li fet ne se fist mie en sa juresdiccion ou en lu nient t*er*minable illoec, ou por ceo q*e* li juge nad poer a conustre en la qualite ou la q*ua*ntite de la chose.

[1] Corr. *nest.* [2] Corr. *ou laccion est.*

brought into court,' or, 'It does not authorise you to take cognisance of such or such a point'; or he may urge that the commission is vicious, and this it may be in divers ways, as if it be not sealed with the seal of the king's chancery, for to the king's privy seal, or the seal of the exchequer, or any other seal, save only the seal that is appointed to be known by the commonalty of the people, one is not bound (more particularly in the matter of jurisdiction and original writs) to render obedience touching the laws and usages of the realm, but only in such matters as concern the king. Or it may be vicious because the seal is counterfeit or otherwise falsified, or because the king is not named in the writ or does not attest the writ, and yet is not outside his realm nor in ward; or because the writ makes mention of a summons or citation where the action is personal, or of an attachment where the action is real or mixed; or because the seal is not firm on the parchment, but can be removed and replaced at will; or because the writ was purchased too soon or too late; or because there is in it a rasure or an interlineation or a diversity of handwriting or of phraseology, or because there is false Latin; or because it is written on paper or on a forbidden kind of parchment; or because a default is found in the writ such as an omission or transposition of a word, syllable, or clause, as is the case with abateable writs; or because the king died before the writ was commenced; or because the power thereby delegated has been revoked; or because the writ states falsely the day of its date; or because the commission requires the commissioner to associate with himself some man who is not present; or because the writ has never been sealed; or because the deed was done without the jurisdiction or in such a place that the question cannot be there determined; or because the quality or quantity of the matter in debate is beyond the cognisance of the judge.

Ch. VII. Excepcion a la Persone le Juge.

Tut soit li bref convenable e li poer suffisant, uncore tenent lu excepcions dilatoires a la *per*sone le juge, sicom est de celes p*er*sones q*e* ne poent estre juges.

Ch. VIII. Excepcion del Tens.

Autres dilatoires sunt del tens, de lus, de houres, des man*er*es. E notez iij. man*er*es de tenz exempz aplez, ces queux nul p*ro*ces cedunt e court[1] ne jugement rendu nest estable, tut soi assentent p*ar*ties. Dunt les ij. tens sunt defendu de droit e li tierz de la voluntie le Roi. Lun tent[2] c*on*tient ij. mois aust e setumbre q*e* sunt assignez pur cueiller les fruiz des bles. Lautre tens contient les feirez e les dimenchez q*e* sont assignez a festir pur dieu h*o*nurer e les seinz, les qeles festes sont cestes les jours de Noel, de seint Estevene, de seint silvestre, de la tiffanie,[3] de la purificacioun n*o*tre dame, de pasches ovesq*e* tut la simeine, des Roveis*o*ns q*e* contienent iij. jours, de Lassencion, de la pentecuste, de la Nativite de sein John le baptistre, de xij. Apostres, de seint Lorenz, de lasumpcion la mere dieu, e sa nativitie, de seint michel, de tuz seinz, e de seint martin oveq*es* celes festes q*e* touz q*e* q*es*[4] tenent festivables en lur eveschies p*ar* si q*e* eles soient canonizees, estre ces les jours de reliqes, de la jurciacion[5] de la mere deu e de sa concepcion e del invencion de la croiz. E notez q*e* de ceo q*e* dieu comaunda seintifier le sabbat fet atenir ap*re*s la Resureccion qe len sentefie les dimenges. Li tierz tens est deffendu p*ar* la p*ro*teccion le Roi.

Des houres purrent sourdre dilatoires, car ap*re*s loure de noune ne nutantre ne se tient nul plee estable.

[1] *nul parties sedent en court.* Houard and 1642.
[2] Corr. *tens.*
[3] Corr. *Epiphanie.*
[4] Corr. *levesqes.*
[5] Corr. *Annunciacion.*

Ch. VII. Exception to the Person of the Judge.

Albeit the writ is in due form and the power sufficient, still there are dilatory exceptions to the person of the judge, as is the case with such persons as ought not to be judges.

Ch. VIII. Exceptions founded on Time.

Other dilatory exceptions are founded on time, place, hour, manner. And note that there are three kinds of times which are exempt from pleading, during which no process runs,[1] and if a judgment be given, it is not valid, albeit the parties agree to the contrary. Two of these seasons are forbidden by law and the third by the king's will. The one season contains the two months of August and September, which are appointed for the harvest. The other season comprises the festivals and Sundays, which are appointed for feasting in honour of God and His saints, which festivals are these—the days of Christmas, S. Stephen, S. Sylvester, the Epiphany, the Purification of Our Lady, Easter with the whole week, the Rogations, which comprise three days, the Ascension, Pentecost, the Nativity of S. John Baptist, the twelve Apostles, S. Lawrence, the Assumption of the Mother of God, her Nativity, S. Michael, All Saints, and S. Martin, with those feasts which all bishops observe in their bishoprics provided they be canonised; also the day of the Relics, the Annunciation of the Mother of God and her Conception, and the Invention of the Holy Cross. And note that because God commanded men to keep holy the Sabbath day, it behoves us after the Resurrection to keep Sundays holy. The third season is that banned by the king's protection.

Exception may be taken to the hour, for after the hour of noon or by night no one can hold plea so that it will be stable.

[1] Translation doubtful.

Ch. IX. Excepcion de Lu.

De la manere nessent dilatoires, car en chevachant ne alant, nen tavernes ne aillours forqe en lu comun conu pur consistoire ne se poet fere nule court.

Ch. X. Excepcion a la Persone del Actour.

Autres excepcions dilatoires nessent des persones de ascuns actours, sicom est de ceux qi sunt rebotables daccusemenz.

Autres excepcions dilatoires accrescent des persones de contours, ou des attornez, ou des assoneours, car nul ne poet fere par attorne qe par li mesmes ne poet, ne nul ne poet estre essoneour, attorne, ne contour, qe ne purra estre actour.

Ch. XI. Excepcion de Prison e de Garde.

Ou il purra exceppir de sa persone demeine e dire qil nest mie de son lige poer, cum sil soit en prison pur greignur pecchie, ou en bail, ou appelle ou endite de crim ou de plus haut crim ; ou il purra dire qil nest mie tenu a respondre a ceste,[1] desicom il nest mie mene en jugement par droit ordre qe voet qe nul ne soit destreint par le cors tant cum il est destreignable par fieu ou par autres biens si non pur personel pecchie.

Ou il purra dire qil nest mie tenu a respoundre a nul accion qe touche perte de vie ou de menbre, ou droit de proprietie, jesqes ataunt qil soit plenerement de eage de xxij.[2] ans ou de plus. E autres dilatoires sunt des persones des respons dunt avant piert.

[1] Supply *accion*. [2] Corr. *xxj*.

Ch. IX. Exceptions to the Place.

Dilatory exceptions may arise from the mode of holding the court, for none can be held by those who are riding or walking; it must not be held in a tavern or elsewhere than in a place which is publicly known as a consistory.

Ch. X. Exceptions to the Person of the Plaintiff.

Other dilatory exceptions are founded on the personality of certain plaintiffs, as is the case of those who may be rebutted from accusations.

Other dilatory exceptions are against the persons of the pleaders, attornies, essoiners, for no one may do by attorney what he cannot do in person, and no one can be a pleader, attorney, or essoiner who cannot be a plaintiff.

Ch. XI. Exceptions founded on Imprisonment and Wardship.

Or one may find matter for an exception in one's own person, and say that one has not liege power over oneself, as if one be in prison for a sin greater than that now charged against one, or in bail, or appealed or indicted of a crime or of a higher crime; or one may say that one is not bound to answer to this charge because one has not been brought into court by due process, and due process requires that one shall not be distrained by one's body so long as one is distrainable by one's fee or other goods, unless it be for a personal sin.

Or one may say that one is not bound to answer to any action which touches loss of life or member, or the right of property, until one is of the full age of twenty-one years or upwards. And there are other dilatory [exceptions] founded on the personality of the respondents, as appears above.

Ch. XII. Excepcion de Somonses.

En plez de somounse purra il dire qil ne deit mie respondre, *pur* ceo qe lactour ne tient sute ne desresne nautre manere de *proeve* nad *present*, ou pur ceo qe lactour nad trovie nule sieurte a siure sa pleinte; ou pur ceo qe il ne fu point somons, ou nient renablement somons de ci qil ne recust la somonse *par* nule *franc* hom*me* ou forq*e* *par* un *franc* hom*me*; ou *pur* ceo qil en fu somons trop tart, ou *pur* ceo qil ne fu mie somons al fieu, ou *pur* ceo qil nestoit unq*e* garni sur quele chose respondre; ou *pur* ceo qil nestoit unq*e* somons ver tiel actour.

Ch. XIII. Excepcions de Vicious Countes.

Sicum briefs viciouses sunt abatables aussi sunt vicious appealx; cu*m* si appel ne seit com*mence* de dienz lan de la felonie fete, ou nient devan*t* coroner, ou nient el countie ou li pecchie se fist, ou nient en lu du. Ou *par* variance, ou *par* defaute daffermeure del appel; ou *par* omission, ou *par* inter*r*upcion; ou pur ceo q*e* lactour defailli de son appel vers autres en meme lappel.

Ascune foiz avient q*e* chose robbe ou emble eatrove en la possession de loial home ver qi le seignur de la *pro*petie, ou de la possession, fet a soun appeal, cu*m* celi q*e* ne siet autre robbour ou lierre de la chose. En quel cas destinctez, car si tiel possessour troeve qi li[1] dona vendi ou bailla la chose, e cist avouue la chose sanz collusion, en tel cas est li possessour quite ou al meins plevissable jequis a la venue des justices; e issi de plusours mesn*es* ieqes al drein, e cist est tenable jesq*es* a son jugement. E q*uan*t justices vendrent li p*ri*mer possessour ensoit p*ri*mes arresonie, e cist die coment il li avient; sil voille voucher neqedent a garant ne poet il mie, ne adire le title de sa possession a p*er*sonele

[1] *que a lui on.* Houard.

Ch. XII. . Exceptions to Summonses.

In a plea commenced by summons one may say that one need not answer, because the plaintiff has no suit or deraignment or other manner of proof at hand, or because the plaintiff has not found surety to prosecute his plaint; or because one was not summoned, or not reasonably summoned, since one did not receive the summons from a free man, or received it from but one free man; or because one was summoned too late, or because one was not summoned upon the fee in question; or because one had no notice of the matter to which one was to answer; or because one was never summoned in respect of such plaintiff.

Ch. XIII. Exceptions to Vicious Counts.

As vicious writs are abateable, so also are vicious appeals; as if an appeal be not commenced within a year after the felony was done, or be not commenced before the coroner, or not in the county where the sin was done, or not at a proper place. Or, again, because of a variance or a want of affirmation in the appeal; or because of an omission or an interruption; or because the plaintiff has in the same appeal made default against other appellees.

Sometimes it happens that a thing that has been robbed or stolen is found in the possession of a lawful man against whom the lord of the property or of the possession makes his appeal, alleging that he knows no other robber or thief of that thing. In such case we must distinguish, for if such a possessor alleges that the accuser gave or sold or bailed the thing to him, and avows the thing without collusion, then the possessor is quit or at least plevisable until the coming of the justices; and so of several mesne [owners] up to the last, and he must abide his judgment. And when the justices come the first possessor must be first arraigned, and he must say how the thing came to him; but though he may wish to vouch to warranty he cannot do this, and no law compels him in a personal suit to plead the title by

sute ne li chacera nule lei; mes el noun de voucher purra il dire qil ad defendour e qe il i avint par ascun loial title, sicom par achat en tiel marchie ou en tiel autre lu sanz moteier de qi, sil ne sache ou ne voil de dire de qi. En quel cas fet a maunder al viscounte del lu de fere venir jurours; e si li respons soit trove verroi quites en jert, e si non si est dampnable aussi avant cum si lactour eust la felonie provee. E si ascun se met avant, e avoe la chose estre sue, pur ceo nest il mie tantost recevable cum partie, einz jert primes la cause triable par entre les primers qe sen firent pur tieux; e pus se face lestraunge partie sil voille. E si lachat par cas se fist en lu enfranchi, e li viscounte de lu retorne qe il ne poeit fere lexecution del bref pur la franchise de tiel homme ou de tiel lu, einz manda son retour al seignur ou as baillifs de tiele franchise qi rien nen firent, en tieux cas fet amaunder al vicecounte qil nel lesse pur la franchise qil ni entre e face lexecucion: e si li possessour die qe il i avient par ascun certein homme e celi soit present qe voille el defens sanz collusion soit a ceo resceu, e lautre en ancquites.[1] E sil dedie le contract cele affirmature e cele negative sunt terminables par bataille ou juree. A la sute neqedent le Roi, covient al possessour moustier title de sa possession ou de senpurgir, car ij. choses nous sunt necessaires conscience pur nous e fame vers autres. E ceo qest dist de la monstraunce del title de la possession, est tenable es cas ou faus brief ou fausse monoie, ou larcin, ou chose perdue trovie, ou addirre ou estraree ou autre mauveiste est trove a la suite le Rei, e tut soit qe li derrein possessour saquite de la felonie, si lactour neqedent proeve la chose estre sue com de sa possession ou de lautre emble, addirre, ou autrement perdue

[1] *en alla quite.* Houa .

which he held possession ; but, by way of voucher, he may say that he has a defender and that he came by the thing in a lawful way, *e.g.* by purchase in such a market or other place, without saying from whom, if he does not know or does not wish to say. In this case the sheriff of the place must be bidden to cause jurors to come ; and if the answer be found true he will go quit, and if not he is to be condemned just as though the plaintiff had proved the felony. And if any [third] person puts himself forward and avows the thing as his own, he is not at once to be received as a party, but in the first place the cause must be tried between those who have first made themselves parties to it ; and this done, let the stranger make himself a party if he pleases. And if the supposed sale took place within a liberty and the sheriff returns that he cannot execute the writ because of the franchise of such or such an honour or place, but has bidden the lord of the franchise or the bailiffs make a return and they have done nothing, then the sheriff must be told '*quod non omittat propter talem libertatem*,' but must enter and do execution. And if the possessor says that he came to the thing by the hand of such and such a man, whom he names, and that man be present, and will enter into the defence without collusion, then he shall be received to do this, and the other [the person originally accused] shall go quit. But if he [the third person] denies the alleged contract, then this affirmative and negative must be tried by battle or jury. Nevertheless, at the suit of the king, the possessor must plead his title to possession or must purge himself, for two things are necessary to us, conscience making for us and a good reputation among our neighbours. And what is said about showing title to possession holds good also when one is charged at the king's suit with having a forged writ or bad money, or stolen goods, or things that have been lost and found, or that have been mislaid, or that have strayed. And albeit that the last possessor acquits himself of the felony, nevertheless if the plaintiff proves that the thing is his as having been stolen, mislaid, or otherwise lost out of his possession, the

voet droit qil recoere sa chose sanz chescun difficultie de paiement.

Ou il purra aver excepcion dilatoire de vicious conte pax[1] variance dentre les paroles del bref e la nature de laccion e le contie, ou com sil jeit omission de mot chargeant, ou sil met mot chargeant en countie, qe ne fet mie a pronuncier en cele accion, sicom felonie en accion veniale.

E sicom li defendant ad excepcion dilatoire de vicious contie abate, aussi ad lactour replicacion ver le defendant de vicious defens. Mes pur ceo qe nul nest remanable ne jugeable pur noun defendu en apeus de felonie, suffist a chescun defendre la felonie grossement, tut nen countre il mie en son defens chescun parole moteiee en lappel. E en cas venials ou les deffendanz rien ne dient en excusacion de ceo qe lem les met sus en jugement, sunt il jugeables e condempnables com noun defenduz, e en meme la manere est en cas ou len ne se defent mie duement ou nient suffisalment.

Ch. XIV. Excepcions a Provours.

A provour purra lem issi respondre—Sire, jeo sui loial homme e a la foi le Roi e plevi de francs pleges, e cist provour est feloun atteint par sa conoissaunce e hors de la foi le Roi, e par consequent hors de sa pees, par unt il ad perdu franche voiz e defet chescun droit e chescun action, si qe il nad mie persone recevable en nule accion, nient plus qe homme utlaguie par jugement. Ou il purra dire qe il ne li deit mie respondre pur ceo qil nel appella mie en son primer appeal ou nient devant corouner. E si li provour ne sei pusse eider par ceste replicacion, adire—qe lappelle soit enditee de meme le crim, ou ne puisse dire qil ne soit en ascune manere hors de la foi le Roi, li defendant ne li iert ia tenuz a respondre, einz est liverable as francz pleges par la ou il est en diseine, ou as autres meinpernours, tant qe il soit appelle ou enditee.

[1] Corr. *pur*.

law wills that he shall recover his thing without being compelled to pay for it.

Again, we may have a dilatory exception to a vicious count on the ground of a variance between the words of th writ and the nature of the action and the count, as if t plaintiff omits a charging word, or puts into his count charging word which should not have been pronounced in that action, *e.g.* 'felony' in a venial action.

And as a defendant has a dilatory exception to abate a vicious count, so the plaintiff has a replication against the defendant for a vicious defence. But because, in an appeal of felony, no one ought to be treated or judged as undefended, it is enough for anyone to deny the felony compendiously, although he does not use in his defence every word that is set forth in the appeal. But in venial actions where the defendants say nothing by way of excuse against that which is surmised against them, they may be adjudged and condemned as undefended, and the like is the case if one defends oneself improperly or insufficiently.

Ch. XIV. Exceptions against Approvers.

To an approver one may answer thus:—'Sir, I am a lawful man and in the king's faith and pledged by frank pledges, and this approver is a felon attainted by confession and outside the king's faith, and therefore outside the peace, so that he has lost his free voice and forfeited every right and every action, so that he has no *persona* that is receivable in any action, any more than has one who is outlawed by judgment.' Or one may say that he ought not to answer because he was not named in his accuser's first appeal nor before the coroner. And the defendant is not bound to answer, but is to be delivered to his frank pledges, if he be in a tithing, or to other mainpernors who will produce him if he be appealed or indicted, unless indeed the approver can aid himself by a replication to the effect that the appellee is indicted of the same crime or is in some manner outside the king's faith.

Ch. XV. Excepcion a Enditementz.

A enditemens unt lu cestes excepcions—Sire, jeo demant linspeccion del enditement *par* unt excepcions me purre*nt* encrestre, ver les p*er*sons des enditours e de la ma*ne*re de lenditement. Car serfs ne poe*nt* endite*r* nul homme. Ou sil lenditement ne seit fete p*ar* enterre duseine de fra*n*cs hom*mes*, ou p*ar* autres q*e* nul homme ne poent endite*r*, ou si lenditement ne seit seale des seals des xii. jurours ou de plus, ne recordie de justice a ceo aucternee, ou si lenditement ne face mencion de fet especial, ou si lenditement ne jert este fet de denz lan ou de creables genz e de bone fame, nest nul tenu a tel enditement respondre; ne si lenditement neist este fet des veisins de meme le countie, ne si lenditem*ent* soit general, car esclaundre general ne defame nul hom*me* ne chace a respons, cum si lenditement soit tiel est homicide ou lierre ou mauveis, sanz dire de quel pecchie especial; car al veine voiz del people ne fet mie adoner entendement fei ne creance.

Ou il purra dire q*e* justices errerent pus cele felonie fete ou rien fu motie de cest fet.

Ch. XVI. Response a Traison.

Dorling, ici, defent totes traisons e felonies e quanqe est countre la pees nostre seignur le Roi. E q*uant* a la consideracion[1] purra il dire issi—Sire, tut javeit il alliaunce p*ar* entre nous p*ar* homage en ascun tens, avant le tens neqedent q*e* il conte q*e* jeo duisse cele t*rai*son aver fete, li avere jeo rendu tut le fieu q*e* jeo ting de li, ou le p*er*di p*ar* jugement ou p*ar* disseisine q*e* lactour me fist, ou il meismes me assigna achevir a autre del tut. En quel cas se destrut la felonie e lactour est condempnable.

[1] Corr. *confederation.* 1642.

Ch. XV. Exceptions to Indictments.

To indictments there are these exceptions:—'Sire, I crave an inspection of the indictment whereby exceptions may accrue to me, as to the person of the indictors and to the manner of the indictment.' For serfs can indict no one. Or if the indictment be not made by a complete dozen of free men, or be made by those who cannot indict anyone, or be not sealed with the seal of twelve or more jurors and put on record by a judge authorised thereto, or if the indictment make no mention of any particular deed, or be not made within the year and by credible folk of good fame, no one is bound to answer it; nor if it be not made by neighbours of the same county, nor if it be in general words, for a general slander will not defame anyone nor force him to answer, as if the indictment be that such an one is a homicide, or a thief, or an evil doer, without saying what particular sin he has committed; for to the empty voice of the people one must not give hearing, credence, or faith.

Or one may say that since the felony was committed there has been an eyre of the justices in which nothing was alleged about it.

Ch. XVI. Answer in a Case of Treason.

Dorling, who is here, defends all treasons and felonies and all that is against the peace of our lord the king. And as regards the confederation, he may say thus:—'Sir, albeit there was an alliance between us by homage at a certain time, nevertheless at the time at which, according to his count, I was guilty of this treason, I had surrendered to him all the fee that I held of him,' or 'had lost it by judgment,' or 'by a diseisin which the plaintiff did to me,' or 'he himself assigned me over that I should acknowledge another as my immediate lord for the whole fee.' In which case the charge of felony is destroyed and the plaintiff is to be condemned.

E q*uan*t a la consideracion[1] par serement de feautie, purra il dire q*e* cele alliaunce defist lactour ver li en tiel point ou tiel. Ou issi—cele feautie issist de fieu dunt li defendant nen est point tenant ne en demeigne ne en seignurie.

E a la liaunce de curtoisie sen purra il dire q*e* tiel bienfet ne durra forq*e* al tens q*e* passa avant le tens nomie en lappel, car unke pus ne li paie rien de tele pension ou dautre curtoisie si p*ar* jugement non e maugre soen. Ou issi—avant le tens nomie en lappel li rendi il son escrit de cele pensioun ; ou la li relessa e quiteclama, p*ar* unt lalliaunce se defit. E[2] quex cas jugement se fet pur le defendaunt.

Ch. XVII. [*Del Arson.*][3]

Arson porra il dire q*e* laventure avient de meschcaunce e nient de felonie p*ur*pensee.

Ch. XVIII. Darsoun e Homicide.

Al apeal de homicide purra il dire q*e* laccion nappent mie a tele femme plentive desicom il nestoit mie occis en ces braz ne en sa seisine. Ou issi—Sire, cist actour ni ad nul accion, de sicom il jad autre plus p*ro*schein de sanc, qi ad attame son appeal e ad p*er*sone recevable a accusement; ou il purra dire qil nest mie tenu a respoundre en engleterre p*ur* fet fet hors del Reaume, si no*n* pur chose q*e* touche le droit le rei, cum de sa p*er*sone ou de son h*er*itage; nen lu privilegee ou li bref le Roi ne court nient de fet fet el forein, ne se[4] rev*er*s, ne en lu enf*r*anchi de fet fet el gueldable, ne le revers.

Ou il purra dire:—nent felonessement einz aventurousement, ou p*ar* loial jugement. Ou issi—nient countre

[1] Corr. *confederation*. 1642. [2] Corr. *en*. [3] Not in MS. [4] Corr. *le*

And as to the confederation by oath of fealty, he may say that the plaintiff undid the alliance between them at this or that point. Or he may say thus:—'The fealty in question issued from a fee of which the defendant is not tenant either in demesne or in seignory.'

And as to an alliance by courtesy, he may say, that the said benefit endured only for a time which had elapsed before the time named in the appeal, for never after that did the appellor pay him the pension or other courtesy save under stress of judgment and against his will. Or thus, that before the time set forth in the appeal the appellee surrendered to the appellor the writings that secured the said pension, or released or quitclaimed him, whereby the alliance was undone. In these cases there will be judgment for the defendant.

Ch. XVII. Answer in a Case of Arson.

To a charge of arson one may say that the event was the outcome of mischance and not of forethought felony.

Ch. XVIII. Arson and Homicide.

To an appeal of homicide he may say, that the action does not belong to the female plaintiff, since the dead man was not slain in her arms or in her seisin. Or thus:—'Sir, this plaintiff has no action, since there is one nearer in blood to the dead man who has entered his appeal and is the person to make the accusation.' Or he may say that he is not bound to answer in England for a deed done out of the realm unless it be for something that touches the right of the king, *e.g.* the king's person or heritage; nor need he answer in a privileged place where the king's writ does not run for what was done outside its boundaries, nor *vice versa*, nor in a franchise for what was done in the geldable, nor *vice versa*.

Or he can say:—'not feloniously, but by misadventure, or by lawful judgment.' Or thus:—'not against the peace

la pees cum futif ou cum felon notoire ou cum cil qe nestoit mie a la pees le Roi ne a sa fei el tens de sa occision.

Ch. XIX. De Larcin.

[1] Lappel de robberie ou de larcin porra il dire—qil fet atort cest appel, de sicom meme cesti actour sui meme laccion vers memes les persons venialment en fourme de trespas par devaunt tieux juges. E si ascun voille soun larcin coverer par avouerie de estrai ou de weif, en tiel cas covendra qe il moustre title allouable de cele franchise; mes cele excepcion est encontrable de cesti replicacion peremptoire—Sire, tiel avouerie ne li deit valer, pur ceo qil cele estrai ou weif ou trouveure enloigna meintenant, ou mucea, e vendi, ou occist ou le mist hors de la veuue e de la notice des veisins, ou il le dust aver pupplie par criees solempnes en marchie e moustrez joingnanz, e moustrie e tenu en lu commun par tut lan entierement.

Al excepcion de destresce, tient lu tele replicacion—Sire, tiele avouerie ne li deit valer, pur ceo qil nestoit mie baillif conu en cele hundred, ou pur ceo qil ne fist nient en manere de destresce, sicom nient en tens ne en houre due ne garant ne en moustra, einz nutantre, ou en tiele autre manere felonessement la robba ou embla, etc. E en meme la manere purra replicacion tenir lu contre robberie fete par colour de disseisine.

Ch. XX. De Homsokne.

A homsokne purra il dire qil entra ces tenemenz sanz felonie fere, e nient countre la pees, sicom el soen demeine e propre.

[1] Supply *A*.

but as one slain while fleeing from justice, or as a notorious felon, or as one who when slain was not in the king's peace or in the king's faith.'

Ch. XIX. Of Larceny.

To the appeal of robbery or larceny he may say:—that wrongfully he makes this appeal, since he himself brought an action against the same persons venially in the form of trespass before such and such judges. And if anyone wishes to cover his larceny by avowing the goods as waif or stray, he ought to show a title to the franchise of waif and stray; but this exception may be encountered by this peremptory replication:—'Sir, such an avowry ought not to avail, for that he at once renewed this estray, or waif, or those goods that had been found, or hid them, or sold or slew the beasts in question, or put them where no view or notice of them could be had by the neighbours, whereas he ought to have published the matter by solemn cry in the neighbouring markets and churches, and displayed and kept them in a public place for a whole year.'

To the exception founded on a distress there is this replication:—'Sir, this avowry should not avail him, for he was not a known bailiff in this hundred,' or 'for he did it not in the way of distress, for he did not take the things at a proper season or hour, and he showed no warrant, but by night,' or in some other manner, 'he robbed or stole them feloniously,' &c. And in the same manner there may be a replication as to robbery done under colour of disseisin.

Ch. XX. Of Hamsoken.

To a charge of hamsoken he may say that he entered into the tenement without felony and not against the peace but as into his own demesne.

Ch. XXI. De Rap.

Al appel de rap purra il defendre la felonie e dire q*e* maugrie soen la poriust il mie, einz soi assenti q*e* bien parust p*ar* ceo q*e* ele conceust de li ameme loure, dautre p*ar*t nule p*re*sumpcion ne sei moustr*a* unke qil la prinst maugre soen p*ar* descirure de dras, ne p*ar* sanc espandu, ne p*ar* hu cri levee, ne p*ar* autre evidence de violence.

Ch. XXII. [*Denprisonement.*][1]

Lappel denpr*i*sonement purra il dire qil le fist par loial jugement de tel juge. Mes a tele excepcion tient lu ceste replicacion q*e* apres ceo q*e* garant li vint de li deliv*e*rer, li retient il p*ar* le tens nome en lappel.

Ch. XXIII. De Mahaim [*e Plaie*].[2]

Mahaim purra il defendre les moz defensables e demander ent la veuue, car de tiel endroit se purra il pleindre q*e* nul mahaim ne iert jugeable. E de lappel de plaie en meme la manere.

Mort le Roi soloit len clore les seax le Roi, suspendre tuz plez, totes gaoles overer, nul justice, nul baillif ne nul ministre le Roi se soloit mes de nul office entremettre p*ar* defaute de garan*t*; e tuz utlaguiez, touz weives, e ceux qe aveint forjure le Reaume e touz baniz soloient dunc retourner, forpr*i*s les exillez e baniz a touz jours.

Si ascun recourt avant pur ceo nel appent mie detre courre sil ne volle justicier a la pees.[3] E sil soit meni en

[1] Not in MS.
[2] Supp. from 1642 and Houard.
[3] *Si ascun retournoit avant, pur ceo ne luy appendoit my destre corue sil voiloit justifier a la peace.* Houard.

Ch. XXI. Of Rape.

In an appeal of rape he may defend the felony and say that he did not corrupt her against her will, but with her assent, as fully appeared from this that she conceived a child by him at the same hour, and on the other hand no presumption arises that he took her against her will since there were no torn clothes, bloodshed, hue and cry, or other evidence of violence.

Ch. XXII. Of Imprisonment.

To an appeal of imprisonment he may say that what he did, he did by the lawful judgment of such a judge. But to this exception there is the replication that, after a warrant had come to him for the delivery of the appellor, he kept him in prison for the time named in the appeal.

Ch. XXIII. Of Mayhem.

In mayhem he may defend the words that have to be defended and crave a view of the wound, for the appellor may be complaining of a wound given to such a part of his body that it cannot be adjudged a mayhem. And so with an appeal of wounding.

[1] On the king's death his seals are put away in safety, all pleas are suspended, all gaols opened; no justice, bailiff, or minister of the king can discharge any duty, for his warrant fails him; and all outlaws and waifs and those who have abjured or been banished from the realm, return, save those who have been exiled or banished for ever.

In case anyone returns before this, he is not therefor to be pursued unless he will not come into the peace and submit to justice; and if he be brought into court and

[1] It is plain that here or hereabouts a new chapter begins; but we have scrupled to interfere with the numeration of the chapters given in the old edition, as references may have been made to it.

jugement e soit encopie de utlagarie, si purra il dire qil est inlaguie par la chartre le Roi, ou il purra dire qe le utlaguerie ne li deit grever par la reson qil ne out mie lage xxj. an le jour del utlaguerie. E pur ceo qil nestoit mie utlaguie pur felonie, ou pur ceo qe la felonie ne se fist mie en tiel countie; ou pur ceo qil ne fu mie utlaguie en engleterre, ou nient en la terre le Roi ou son bref court; car utlaguerie pronuncie sur homme en levesche de Durham ou aillours en la terre ou le bres le Roi ne court nient ne greve a nul qi demoert en la terre ou li bref le Roi court, ne le revers; ou pur ceo qe la felonie ne fist mie el tens de cesti Roi, ou nient pus la dareine eire en tel countie; ou pur ceo qe li proces del utlaguerie fu fausse ou par faus garant ou sanz garant; ou pur ceo qil gust en langour de lessoigne de mal de lit; ou pur ceo qe cist est en pleine vie pur qi mort il fut utlaguie; ou pur ceo qil fu en prison le jour de utlaguerie; ou pur ceo qil estoit el service le Roi de ciel ver la terre de Jerusalim; ou el service le Roi de la terre pur commun profit del reaume; ou pur ceo qil estoit en la protection le Roi; ou pur ceo qil fu arragie de rage continuele, ou folnastre, ou sourd e mut, ou proffes en religion, en quex cas sil prie destre resceu a respons, il est a ceo recevable, e fet a demander al pleintif, ou fet atrier[1] qe si nul sache dire pur quoi tel ne deit estre inlaguie qe il soit a certein jour sicom.

Trestuz presens en jugement qi necessaires e sunt e les brefs lus en audience loriginal e le commission, die li pleintif la quantite ou la qualite de sa pleinte, e li disseisour ou lur baillifs dient chescun pur sei en ceste manere—Il respont e dit pur li qil nad nul tort fet en nule disseisene ne rien nad es tenementz mis en la pleinte. E il respond en meme la manere, e issi de ceo e de autres requis[2] ataunt qe ce veigne al tenant en qi noun la disseisine fu fete, e celi

[1] Corr. *acrier*. [2] Corr. *jeques*.

accused of outlawry, he can say that he has been inlawed by the king's charter; or he can say that the outlawry should not hurt him, since he had not reached the age of twenty-one years on the day of the outlawry; or that he was not outlawed for felony; or that the felony was not done in that county; or that he was not outlawed in England, or not in the land of the king where his writ runs, (for an outlawry pronounced against a man in the bishopric of Durham or elsewhere in the lands where the king's writ does not run harms no one who dwells in the land where that writ does run, and *vice versa*); or because the felony was not done in the time of the king that now is, or was not done since the last eyre of the justices in such a county; or because the process of outlawry was false or upon a false warrant or without warrant; or because he was lying sick in bed under an essoin *de malo lecti*; or because the man for whose death he was outlawed is alive; or because on the day of the outlawry he was in prison; or because he was in the service of the King of heaven on his way to the land of Jerusalem, or in the service of the earthly king for the common good of the realm; or because he was in the king's protection; or because he was mad with a continuous madness, or a born fool, or deaf and dumb, or professed in religion: in which cases if he prays to be received to answer, he is receivable, and then the question must be put to the plaintiff, or proclamation must be made that if anyone knows any cause why this man should not be inlawed, he must appear on a certain day.

When all necessary parties are present in court and the writs, the original writ and the justices' commission, have been read in their hearing, then the plaintiff must set forth the quantity and quality of his plaint, and then the disseisor or his bailiffs must, each for himself, make answer in this manner:—He answers and says for himself that he has done no tort and no disseisin, and has nothing in the tenements mentioned in the plaint. And so each one answers in the same way, until it comes to the tenant in whose name the disseisin was done, and he may answer

poet respondre e dire qil nest mie entre par disseisine einz est par D. qi lenfeffa qi point niest nomee el bref, e poez estre qe D. entra par E. issi purrent estre plusours mesons[1] solum divers feoffmenz par entre le primer disseisour e le tenant, en queu cas nul voucher a garant tient lu pur le personel trespas; e pur ceo sen garde chescun a fere contract de chose vicious e preigne tiel caucione tele sieurte el contract ou il puisse aver recours e recouvrir si li estovera la chose perdu, car poi de covoitise rent sovent damaious guerdoun. E pur ceo soleient les seignurs fere si bien garder lur fieus qe nul ni poieient entrer par entrusions ou par disseisines ou par autres vicious contractz, ne autrement sanz ceo qe les contractz ne fuissent soulement[2] recordiz en lur pleners courz, parunt ne covendreit mie as seignurs de recetter lur enemis en lur fieus e prendre lur homage maugrie lur; ne nul ne isoloit entreer einzces[3] qe pleges fuissent trovez de restorer al purchaceour ou a ces heirs la chose ou la value, si par droit jugement li covenist pus la chose perdre par la pecchie le alienour ou par son noun poer de garantie. Al principal disseisour bosoigne bien aprendre garde si li pleintif mette trop en sa pleinte, si qe il ne respoigne forqe a cele quantite qe il purra avouuer. Il purra dire qe il iad variance entre loriginal e le comission, ou qe ascun bref est vicious.

Contenu est el bref—pleint sest a vous.A.qe.B.E.; queles paroles lem purra cueiller excepcions sic, sicom en mesprision de nouns, ou de nouns sornouns, sicom Renaud pur Arnaud, Margerie pur Margarete e tieux autres. Ou il purra dire qe li bref est vicious par vices sournons, ou si les sournons de dignetiez ifaillent cum si evesqes, abbes, priours e autre prelatz seit disseisi del droit de sa dignetie, e il se pleint simplement de trespas fet a sa persone e nient a sa eglise

[1] Corr. *mesnes* (?). [2] Corr. *solemnelment*. Houard. [3] Corr. *einz-ceo*.

and say that he entered not by disseisin but by the feoffment of one *D.* who is not named in the writ, and it may be that *D.* entered by *E.*, and so there may be several mesne tenants by divers feoffments between the first disseisor and the now tenant; but in this case there can be no voucher to warranty, because of the personal trespass; and therefore everyone should beware how he makes a contract touching a thing that is vicious, and should take such a security or pledge in the contract that he may, if need be, have a way of recovery open to him if he loses the thing, for a little covetousness often returns a hurtful reward. And for this reason lords are wont to guard their fees so well that no one may enter them by intrusions or disseisins or by other vicious contracts, or otherwise than by contracts which are solemnly recorded in the full courts of those lords, so that the lords may not be obliged to receive their enemies into their fees, or against their wills take the homage of their enemies; and also it is usual that no one shall enter until pledges have been found to make restitution to the purchaser or his heirs of the thing or its value, in case by lawful judgment he shall afterwards lose the thing by the sin of the alienor or by his inability to warrant. The person charged as a principal disseisor should take good care that the plaintiff does not put too much land into his plaint, so that he, the defendant, does not answer for a larger quantity than he can avow. He can say that there is a variance between the original writ and the justices' commission, or that there is some vice in one of the writs.

In the writ it is said:—'*A.* complains to you that *B. E.*'; —to these words an exception may be taken on the score of a mistake in names or surnames, as if Reynold be put for Arnold, or Margery for Margaret, or the like. Or he may say that the writ is vicious because of a flaw in the surnames, or the omission of titles of dignity. Thus if a bishop, abbot, prior, or other prelate be disseised in right of his dignity and complains simply of a trespass done to his person and not to his church or dignity, and speaks

ou dignete en ceste manere : pleint cest a vous A. simplement, ou il dust dire pleint cest a vous A. evesqe de Londres, e aussi est des disseisours.

Ou il purra dire qe li bref est vicious, pur ceo qe li pleintif qe soul est en la pleinte, nad nule accion si non pur autre persone qe point nest nomie el bref; ou il purra estre vicious si contenu soit el bref disseisivit eum, ou dust estre disseisivit eam ou eos, ou dust estre eum ou eam ou le revers.

Contenu est el bref a tort e sanz jugement ecet., a ceo poet lem dire qe nient atort mes adroit sicom rebotant ou freschement engetaunt autri force.

E notez qe lem poet estre disseisi a tort e sanz jugement, e a tort e par jugement, com est de ceux qi sunt deseisis de lur franc tenement par justices qi a ceo fere nunt nule juresdiction, e forjugent neqedent homme estre engete de sa possession. E len poet disseisi a droit e sanz jugement cum es cas avandiz. E estre ceo a dreit e par jugement. E de ceo sourdent excepcions; issi nient sanz jugement mes par jugement, e ceo poet estre ou par jugement des juges commissaires, ou de juges ordenaires cum sunt sutiers.

Dautre part purrent briefs estre vicious par mesprison des nons des villes, com si hamelez soit nomee pur ville, ou si la ville ne soit adroit nomee, ou si la ville ne soit destincte ou ij. semblables nons de villes sunt en j. countie.

E de cel mot pus le terme purrent sourdre excepcions cum si ne mie pus le terme.

Destresce purra il avoer pur arrerages de pension ou de especial obligacion, sauve qil neit fet nul tort. ou pur ceo qe autre brief de meme laccion est uncore pendant entre meme les parties. Ou il purra dire qe a tort se pleint

thus: '*A.* complains to you,' whereas in this case he should have said '*A.*, Bishop of London, complains to you'; and so it is with the names of the disseisors.

Or he may say that the writ is vicious, for that the plaintiff who is named in the plaint as sole plaintiff has no action unless it be in right of another who is not named in the writ; or because the writ says 'disseisivit eum,' where it ought to have said 'disseisivit eam' or 'eos,' or that it should have said not 'eam' but 'eum,' or *vice versa*.

And the writ says 'injuste et sine judicio'; and to this one may say 'not wrongfully, but rightfully as one who was repelling the violence of another or making a speedy re-ejectment.'

And note that one may be disseised 'injuste et sine judicio,' or 'injuste' but not 'sine judicio,' as is the case of those who are disseised of their freehold by justices who have no warrant to do this, but nevertheless adjudge that a man be ejected from his possession. And one may be disseised 'juste' but 'sine judicio,' as in the cases [of speedy re-ejectment] mentioned above. Or again it may be both 'juste' and 'per judicium.' And out of this exceptions may arise; thus—'not sine judicio but per judicium,' and this may be by the judgment of judges delegate or of judges ordinary, such as are the suitors of a court.

Again, a writ may be vicious because of the misnomer of the vill, as if a hamlet be called a vill, or a vill be not rightly named, or if the vill be not distinguished where there are two vills of the same name in one county.

And an exception may arise out of the words 'infra terminum,' if the disseisin took place before the term of limitation.

A distress one may avow as having been made for the arrears of a pension or under an obligation by specialty, but with the saving clause that one has done no tort. [And an exception may be taken] because another writ in the same action is pending between the same parties. Or the tenant may say that the plaintiff complains wrongfully, because

desicom a sa pleinte demeine perdi meme le tenement par loial jugement vers meme le tenant, ou de sicom il ad relesse e quiteclamie tut son droit ameme le tenant ou autrement[1] ratifie son estat, ou pur ceo qil se retret autrefoiz de sa accion par devant tieux juges.

En eides des memoires des genz sunt escriz, chartres, e monumenz mout necessaires pur tesmoigner les conditions e les poinz des contracz par lestatut Leuthfred,[2] qe ordena qe len put defendre ledenges diz e contractz des suz estuz, e miz par sa lei.[3] E qe actours prouassent lur escriz ou lur chartres dedites e nient prouables par jurours en engleterre, por foreinz contractz ou de lus enfranchis ou aillours, ou le bref ne court nient par copie e collacion de autres seals, ou par jurours ou par bataille solom laccion des actours.

Pur doner matire e voie a excepcions en eide de responeurs, bon est assavoir le terme e la limitacion des accions e des pleez, par si qe pleez preignent fin, e pur ceo furent ordene prescripcions e usucapcions. Dunt Thurmod ordena qe accions criminales a siure vengeaunce cessent a la fin de primer an, si avant ne soient attamez, e meme le terme assigna il en accions de wrec, weif, estrai, e de chose perdue, car as veillanz soulement eide droit. En personeles accions veniales dona il le terme pus la derreine eire en teles parties, en reales accions e mixtes dona il xl. ans de terme. Al Rei neqedent quant al dreit de la coroune ne a franc estat, ne poet nul tens encourre.

Al accion daccounte purra il dire qil nestoit unqe soun recevour, ne administrour de ses deners ne de ces biens, dunt il li soit tenu dacounte rendre, e qe il recust de li souz le title demprumt e dunt il li fist escrist de rendre a termes certeines. Ou issi—tut fut il son recevour ou administrour

[1] *ou autrement* occurs twice in MS.

[2] *d'Alfred.* Houard.

[3] *que l'on poit deffendre dits et contracts des cas et moyens per sa ley.* Houard. Perhaps *estuz* should be *escriz*; but we are unable to restore this passage.

the plaintiff on his own plaint has already by a lawful judgment lost this land to the tenant, or has released or quitclaimed all his right to the tenant, or otherwise ratified the tenant's estate, or on a previous occasion withdrew from his action before such and such judges.

[1] By way of aid for men's memory, writings, charters and muniments are very necessary to testify the conditions and the terms of contracts under a statute of Leuthfred, who ordained that one might deny . . . sayings and contracts . . . by making one's law,[2] and that plaintiffs should prove their writings or charters when these have been traversed and cannot be proved by jurors in England, being contracts made in foreign parts or in franchises, or elsewhere where the king's writ does not run, either by jurors or by battle, according to the nature of the plaintiff's action, and not by copies or a collation of other seals.

In order to provide matter for respondents who are in search of exceptions, it is well to know the periods of limitation for actions and pleas, that so pleas may find their limits, and for this purpose prescriptions and usucapions were ordained. And about this matter Thurmod ordained that criminal actions in pursuit of vengeance should cease at the end of the first year, if they were not entered before that period, and he assigned the same period in actions for wreck, waif, estray and lost goods, for 'vigilantibus' only will the law aid. In personal venial actions he fixed the last eyre in those parts as a term of limitation, and in real and mixed actions he allowed forty years. But time does not run against the king in respect of the rights of the crown or his free estate.

In an action of account, he may say that he never was the plaintiff's receiver, nor the administrator of his money and goods, so as to be bound to account, and that what he received he received by title of loan and under a writing which provided for redelivery at a time certain. Or thus: —'Albeit he was the plaintiff's receiver or administrator

[1] This paragraph occurs again; see IV. c. xxvii.

[2] The text as it stands is unintelligible.

en F*r*ance ou aillurs hors del reaume, ou en lu enf*r*anchi, pur ceo ne li est il nient plus tenu dacounte rendre el reaume ou li bref le Roi court, ou el gueldable q*e* le rev*er*s.

Ou il purra dire q*e* li bref est vicious p*ar* fausse supposicion, e suppose faussement le defendant estre futif e estre ceo nient fieu tenant en la baillie celi a qi li bref est maunde. Ou il ne li est tenu en nul acounte, de si q*e* il nestoit unq*e* son recevour forq*e* de mein en goule, e de cotidiene receite tendi cotidien acounte, ou ri*en* ne despendu nacata forq*e* a la veuue del actour ou des soens. Ou, pur ceo q*e* lactour est seisi des tailles e des roulles e de quanq*e* valleit purreit al defendant dacounte rendre. Ou, pur ceo qil en ad aquitaunce. Ou pur ceo qil nestoit unq*e* gardein de son heritage cu*m* son gardein, einz fu gardein cu*m* de sa chose p*r*opre durant de tens cu*m* celi a qi la g*ar*de del fieu appendi de droit, quel fieu q*e* ceo fust socage ou autre.

Accion de naifte purra il dire q*e* il est f*r*anc e sil la p*r*oeve adunq*e* ou autre foiz p*ar* bref de sa f*r*anchise p*r*over, si iert quite del chaleng del actour a tuz jours si renable replicacion nel encountre. E q*uant* a seisine de villeins s*er*vices, porra il dire q*e* tieux s*er*vices li fet atort e p*ar* extorsions e duresces de li e de ces baillifs, ou pur le s*er*vage del villenage e del villein fieu q*e* il tient de li e ne mie p*ar* s*er*vage de son sanc. E notez ij. choses : lune q*e* si le defendant puisse moustrer f*r*anc cep de ces auncestres en la concepcion ou en la nativite, ou pus, li defendant iert tenable pur f*r*anc a touz jours, tut isoient p*r*esens pere, e mere, frere, e cosins e touz son parentie q*e* se conoissent estre serfs al actour e tesmoignent le defendant estre serf ; lautre notabilite est q*e* nient plus ne fet lunge tenure de villenage f*r*anc hom*m*e serf q*e* longe tenure de f*r*anc fieu ne

in France or elsewhere out of the realm or within some franchise, he is not bound to render an account in this realm, or where the king's writ runs, or in the geldable, and *vice versa*.

Or one can say that the writ is vicious because of a false supposal, in that it falsely supposes the defendant to be a fugitive and also no fee tenant within the bailiwick of him to whom the writ is sent. Or again, that he is not bound to account, for that one was only the plaintiff's receiver from hand to mouth and rendered daily account of daily receipts, or spent and bought nothing save under the eyes of the plaintiff or of his folk. Or, for that the plaintiff is seised of the tallies and rolls and all that would enable the defendant to render an account. Or, because the defendant has an acquittance. Or, because he never was guardian of the plaintiff's inheritance as being the plaintiff's guardian, but was guardian of the thing as of his own proper thing during the time in question as he to whom the wardship of the fee belonged by right, whether that fee were socage or otherwise.

In an action of naifty, the defendant may say that he is free, and if he proves this now or on another occasion by writ *de libertate probanda*, then he is quit for ever from all claim on the part of the plaintiff, unless some reasonable exception encounters him. And as to the seisin of villain services, he may say that these services he did wrongfully and under the extortion and duress of the plaintiff and his bailiffs, or by way of the services due from the villainage or villain fee that he held of the plaintiff, and not by reason of any serfage in his blood. And note two things: first, that if the defendant can show a free stock among his ancestors at his conception, or his birth, or afterwards, he is accounted a free man for ever, although there be present his father, mother, brothers, cousins, and all his kindred, who confess themselves to be the plaintiff's serfs and testify that the defendant is a serf; secondly, that long tenure of villainage will not make a serf out of a free man any more than long tenure of a free fee will make a free man out of

fet homme serf franc, car franchise ne se defet jammes par prescripscion de tens.

Proeve dediz desdiz se font en plusours maneres, ascune foiz par recordz, ascune foiz par batailles, ascune foiz par tesmoins, ascune foiz par confessions des parties adverses.

Par recorz cum en cas ou parties sassentent en ascun enroullement, ou el dit dacun juge ordenaire ou assigne.

Par bataille, car sur le garaunt del combat qe se prist jadis par entre David pur le peopel de isrel dune part, e Golie pur les philistiens dautre part nostre sire Dieu, est[1] usage tenu pur lei en engleterre issi qe proeve de felonie e en autres cas se face par cumbat. Se diverse solom les diversetez daccions, car sicom il iad personele accion e reale, aussi ad il personel combat e real—personel en personeles accions, real en reales. E ces combatz diversent, en tant qe en personeles cumbat pur felonie ne poez nul combatre pur autre, en personeles accions neqedent veniales list as actours de fere les batailles pur[2] lur cors ou par loial tesmoiner, dendreit reales combatz pur ceo qe nul ne poet estre tesmoin de li memes e nul nest recevable a desrener son roial[3] droit demeine, covient qe tieux combatz se facent pur les actours par tesmoins, les defendanz neqedent purrent lur droit demeine defendre par lur cors demeine, ou par les cors de lur francs hommes. E estre ceo diversement en taunt qe en appeaux ne poet nul cumbatre pur autre, mes en reales accions est autrement, car si lune des parties meschece qe ele ne puisse combatre son fiz einzne legitime purea[4] fere la bataille pur li.

Cumbat est bataille de ij. hommes, suffert[5] a moustrance de verite, issi qe victoire isoit tenue pur proeve. Cumbaz se font en plus des cas qe en felonies, car il se funt en plusours faussetez atteindre, cum si ascun meit fet ascune faussetie en fet ou en dit, dunt il soit appelie ou enpecche en jugement, sil le dedie, a mei list de prover cele accion

[1] Corr. *cest.*
[2] Corr. *par.*
[3] Corr. *real.*
[4] Corr. *purra.*
[5] Corr. *suffist* (?).

a serf, for freedom is never destroyed by prescription of time.

Proofs of controverted statements are given in divers ways, sometimes by record, sometimes by battle, sometimes by witnesses, sometimes by the confession of the adverse parties.

(i.) By record, as if the parties have assented to some enrolment, or to the award of some judge ordinary or delegate.

(ii.) By battle, for this usage is held for law in England by the warrant of our Lord God in the matter of the battle joined between David on behalf of the people of Israel of the one part, and Goliath on the part of the Philistines of the other part, so that proof in cases of felony and in other cases is made by combat. But there are distinctions to be drawn according to the diversity of actions, for as there are personal and real actions, so there are personal and real combats—personal combats in personal actions, real in real. And these combats differ thus: in personal combats for felony no one can fight for another, though in venial personal actions it is lawful for a plaintiff to do battle by the body of a lawful witness; but in the case of real combats, because no one can be a witness on his own behalf and no one can be allowed to deraign his own real right, it is right that such combats should be fought on the plaintiff's part by a witness, but a defendant may nevertheless defend his own right by his own body or by the body of a free man of his. And there is this further difference that in appeals no one can fight in the stead of another, but in real actions it is otherwise, for if a mischance happens to one of the parties so that he cannot fight, his eldest legitimate son may do battle for him.

Combat is a battle between two men, and this suffices to prove the truth, in that victory is accounted proof. Battles are joined in other cases besides felonies, for they are used for the attainting of various falsehoods, for if anyone has done me any falsehood in deed or in word, and if this is appealed or impeached in court, then if he denies it, I can

par jurours, ou par mon cors, ou par le cors de .j. testmoin. E si ceo soit de faus jugement de plusours adunc appent la proeve soulement ver le pronunciour del jugement pur tote la court e aussi en cas ou vous dediez vostre don, baille, vente, plegeage, escrit, seal ou autre manere de contract ou dist qe vous deistes ou fet qe vous feistes.

Des qualites des causes neqedent destinctez, car en appeals de felonie ne poet nul combatre pur autre sicom est dit, mes en venales causes tut seit qe ascun seit occis de bataille pur ceo ne fet il nul homicide aconter, einz soleint tieux vencuz ou lur cliens pur eus rendre as cumbatanz vencanz .lx. en nom de recreantise e maille pur la borse a mettre einz ces deners, estre le jugement sur le principal. Es cas ou bataille ne se poet joindre ne nul tesmoinage nestoit, se soloient genz eider en personeles accions par les miracles dieu, en ceste manere—si li defendant fu femme ou tiel pur qi condicion bataille ne se poet joindre, e lactour nout point de testmoins a prover sa accion, adunqe estoit en le leccioun del defendour a purgir sa fame par la miracle dieu, ou doner la proeve sil[1] actour. E es cas revers appendi la proeve soulement al actour. Al jour de la proeve ou de la purgacion, apres la beneiceon e la maleiceon, le prestre revestu des garnemenz de la messe, e apres les seremenz des parties, soloit len a gardir a la partie e la porter a la mie mein une pece de fer flaumbant sil fust franc homme, ou de mettre la mein ou le pie en euue boillant sil ne fu franc, ou tele autre chose a fere qe impossible serioit a fere sanz la miracle dieu, e cil ne se blesseast, la diverse partie remeindroit cum atteint. Mes seinte crestiene qe ne soeffre mie qe dieu soit par tiez acorz si len poet.[2]

Entre totes genz ne se joint mie bataille, car ele ne se joint forqe par entre parigals, ne uncore nient entre touz

[1] Corr. *al.* [2] *par tiels a torts si lun poet avoider autrement.* 1642.

prove against him by jurors, or by my body, or by the body of a witness. And if my complaint be of a false judgment given by more than one, then I need prove this only against him who pronounced the judgment on behalf of the court. And so if you deny your gift, bailment, sale, pledge, writing, seal, or other contract or speech or deed said or done by you.

Nevertheless we must draw a distinction as regards the quality of causes, for, as already said, in appeals of felony no one can fight for another, but in venial cases, although one be slain in the battle, for all that no homicide is considered to have been committed, but those who are vanquished or their clients for them are wont to render to the vanquishers sixty shillings in the name of 'recreancy' and a halfpenny for a purse to put this money in, and besides this there is judgment against the principal. In a case in which battle cannot be joined and there is no witness, men used to have recourse in personal actions to the miracles of God, in this manner:—if the defendant was a woman or of such condition that battle could not be joined and the plaintiff had no witnesses to prove his case, then it was at the election of the defendant to purge his fame by the miracle of God or to concede the proof to the plaintiff. And in the reverse case [where the plaintiff could not fight] the proof [by ordeal] belonged to the plaintiff only. On the day of the proof or purgation, after the benediction and malediction by the priest robed in his mass vestments, and after the oaths of the parties, the practice was to keep the party in ward[1] and to place in the middle of his hand a piece of red-hot iron, in case he was a free man, or if he were not a free man then to put his hand or foot in boiling water—or something else that it was impossible for him to do without a miracle of God, and if he suffered no harm, the adverse party remained as one attainted. But holy Christianity would not suffer that God [should be tempted thus if it could be avoided[1]].

Battle cannot be joined between all folk, for it can only be joined between 'peer-equals,' nor even between all peers,

[1] Translation doubtful.

piers, car ne mie par entre pere e filz ne par entre femmes, ou enfanz, ou clers, ou parenz, ou affins. Parigal ne sunt mie homme e femme, ne homme seint e homme escomenge, ne cristiene nient cristiene, ne homme sein e meseal, ne homme en bon estat e homme arragie, ne homme sage e homme folnastre, ne homme entier e homme mahamie, ne homme e enfant, ne clerc e lai, ne homme profes en religion e homme seculer, ne homme loial e felon, ne homme a la fei le Roi e homme nient a sa foi, ne seignur e tenant ou famuler.

Petuesce de chose aussi qe chiet en debat e en demande destorbe bataille, e plusours autres resons solom ceo qe piert en lei de fieus; si ceux neqedent qe ne sunt mie recevables a bataille voillent cumbatre si bataille se joigne par entre eus qi la desirent, qe lur fet tort, e si ascun se profre a cumbatre armie qi avant nestoit mie proffert par nule des parties, e la partie adverse demande jugement de la defaute soun adversaire sicom il tendi tesmoin qi se proffir a fere la desrenee e ore proffre a fornir la bataille par autre qi avant nestoit veu ne oi en court, ne qi ne poet nen deit la bataille fere ne fornir, en queu cas appent atrier lexcepcion cum peremptoire del accion si les parties le voelent attendre.

Ch. XXIV. Juramentum Duelli.

Apres bataille jointe ajorne, e presentes les parties e duement armees en primes jurge li defendant, en ceste forme:—Ceo oiez vous homme qe jeo par la mein tieng, qi vous fetes N. appeller par droit non de baptesme, qe jeo noccis unqes tiel, vostre piere—ou tiele autre chose ne dis ou ne fis tel jour e cet., si meid dieux e les seinz euangires.

Puis appent qe lactour jurge en ceste manere :—Ceo oiez vous homme qe jeo par la mein tient qe vous fetes J. appeller

for not between father and son, nor between women, nor infants, nor clerks, nor kinsmen by blood or by affinity. Men and women are not 'peer-equals,' nor a holy man and an excommunicate, nor a Christian and one who is no Christian, nor a sound man and a leper, nor a man in good estate and a mad man, nor a sane man and a born fool, nor a whole man and a maimed man, nor a man and a child, nor a clerk and a layman, nor a man professed in religion and one who is secular, nor a loyal man and a felon, nor a man who is in the king's faith and one who is not, nor lord and tenant or servant.

Battle also may be prevented by the triviality of the thing that lies in debate or demand, or by many other reason as appears in the law of fees; but nevertheless if those between whom battle does not lie wish to fight and battle is joined between them, this is no injury to them; and if a man offers to fight armed and was not originally tendered as a champion by either of the parties, and the adverse party craves judgment of his opponent's default as having tendered a witness who offered to deraign the matter and now tenders to furnish the battle by another who has not previously been seen or heard in court, and who therefore cannot fight or furnish the battle, then this exception must be tried as one that is peremptory of the action, if the parties will demur on this point.

Ch. XXIV. The Oath of Battle.

After battle joined and adjourned, when the parties are present and duly armed, the defendant shall swear in the first place as follows:—Hear this thou man whom I hold by the hand, who hast thyself called N. by thy right name of baptism, never did I slay such an one thy father—or never did or said such a thing on such a day, &c.—so help me God and the holy Gospels.

Afterwards the plaintiff shall swear thus:—Hear this thou man whom I hold by the hand, who hast thyself

par droit noun de baptesme qe vous estez perjurs, pur ceo qe vous a tiel jour ecet. felonessement occistes, ou tele chose deistes ou feistes.

Ch. XXV. Ordinatio Pugnantium.

Pris les seremenz, fet aprendre garde qe les parties soient armees solom lancien usage de quele condicion qeles soient, chevalers ou autres. Lancien usage destre armee en touz cas de cumbat est tel—les cors soient armees sanz fer, corn e balenie, e les testes, les cols e les meins soient descovertes, les reins, qesses, e jambes, e piez, soient armez de quir, e chescun eit escu quire, e bastoun cornu dune assise.

Lactour viegne en la place de devers lorient, e li defendaunt devers loccident, e jurgent en la place en ceste manere qil nen unt sur eus charme ne deceite, rien nunt mangie beu ne usie dunt verite puisse estre destourbe, ou abesse e la lei al deable eshancee, si lur eid deus e les seintes evangires. Pus fet acrier tel lun qe nul ne destorbe la bataille par fet, cri ne noise, sur peine de peine corporele. E tantost sen voisent entre ferir, e si li defendaunt puisse sei defendre iequis apres le solail rescousie e demande jugement de la defaute lactour, se fet en tel cas jugement pur le defendaunt. E si fraude soit trovie ovesqes .j. des parties com darme privee e dautre chose desavouable e la partie adverse demande jugement de la fraude, tantost sont severables, e jugement en est tantost rendable. E li vencuz conoisse sunt [1] pecchie en audience de people, ou die lorrible mot de cravent en noun de recreantise, ou li pe senestre li soit desarme e descovert en signe de recreantise, e maintenant soit jugement rendu sur le principal.

[1] Corr. *sun.*

called J. by thy right name of baptism, that thou art perjured, for that on such a day etc. feloniously didst thou slay—or, saidest or didst such a thing etc.

Ch. XXV. The Order of Combat.

The oaths having been taken, it must be observed that the parties, of whatever condition they may be, whether knights or others, are armed according to the ancient usage. The ancient usage as to armour in all sorts of battles is this: the bodies shall be armed without iron, horn or whalebone, and the heads, necks and hands shall be bare, and the reins, thighs, legs and feet shall be armed with leather, and each shall have a shield of leather and a horned baton of a certain length.

The plaintiff shall come to his post facing the east, and the defendant facing the west, and at their posts they shall swear that they have not on them any charm or deceit, and that they have eaten, drunken and used nothing whereby the truth may be disturbed or abased or the law of the devil exalted, so help them God and the holy gospels. After this a cry shall be made that none do disturb the battle by deed, cry or noise, upon pain of corporal punishment. And thereupon they are to begin their strokes, and if the defendant can defend himself until the sun goes down and craves judgment of the plaintiff's default, in that case judgment is given for the defendant. And if fraud be found in one of the parties, as a privy weapon or other unallowable thing, and his adversary craves judgment of the fraud, then they shall at once be separated and judgment shall at once be given. And if the vanquished confesses his sin in the hearing of the people, or says the horrible word 'craven' in sign of his recreancy, or his left foot be disarmed and uncovered in sign of his recreancy, judgment is at once given upon the principal matter.

Ch. XXVI. Excepcion de personel Trespaz.

Quant as *per*soneles trespas tient en cas lu ceste excepcion—Sire atort me plede il de cest trespas, car meme celi enpleda tiel ou tieux devant tieux juges en tiel lu e de meme le trespas e ne mie nust[1] point en cele pleinte, e desicom il recovera plein damages p*ar* jugement ver ceaux adunq*e* nomez en sa pleinte, e ne fet ore ceste sieute ver moi si noun mes q*e* pur damages recov*r*ir, e dreit ne donne mie q*e* len recoevre dubles damages p*ur* sengles, e demang jugement de sa accion.

Quant a alienacions e occupacions des f*ra*nchises reales appendantes a la dignitie de la coroune, ne tenant mie lu voucher a garant, ne veuue demander, ne title de p*rescrip*scion de tieux, car de teles dignitez ne poet nul estre eide del excepcion de longe p*rescrip*scion, einz sunt teles avoueries de longe continuance plus contables p*ur* contumace de tort q*e* loiales excepcions, desicum nul tens nen court au Roi en ses f*ra*nchises, einz use le Roi al foer denfant q*e* ne poez p*er*dre, einz coment q*e* chescun pur le p*er*sonel trespas del occupacion apent a chescun descuser son tort fet au Roi ou a autre, e ceo purra estre en . ij . maneres : ou pur ceo q*e* son auncestre qi heir il est morust seisi, e issi lad il usie p*ar* title de succession cum chose annexe a son fieu ; ou pur ceo q*e* tel de qi il purchaca son fieu al quel tele f*ra*nchise appent e fu seisi tantcum il en fu possessour. Mes ceste excepcion est cont*ra*ble p*ar* tele replicacion—Sire p*ar* cest avouerie ne se porra il mie cov*r*ir nescuser, car tut enfust tiel son p*re*decessour seisi, il neqedent ne poet tele f*ra*nchise aliener, car les Rois ne feffent james issi q*e* les feffez puissent fere assignez.

[1] Corr. *e ne moi mist.* 1642 and Houard.

Ch. XXVI. Exceptions in cases of Personal Trespass.

As to personal trespasses this exception is available: 'Sir, wrongfully he impleads me for this trespass, for he himself impleaded another or others before such and such judges at such a place for the same trespass and said nothing of me in his plaint; and forasmuch as he recovered by judgment full damages against those who were thus named in his plaint, and now is only bringing this suit against me to recover damages, and law will not concede that one should have double damages for one wrong, I crave judgment of his action.'

As regards alienations and occupation of the royal franchises belonging to the dignity of the crown, there can be no voucher to warranty, nor demand of a view, nor reliance on a title by prescription, for as regards these dignities no one can aid himself by the exception of long prescription, but such avowries of long continuance are rather to be reckoned as persistence in wrongdoing than as lawful exceptions, since no time runs against the king in his franchises, but the king is treated in the likeness of an infant who cannot lose [by negligence]; so that it behoves every person to excuse himself for his own personal trespass against the king or another in occupying a franchise; and this he may do in two ways: either he may allege that his ancestor whose heir he is died seised, so that he has used the franchise as a thing annexed to his fee; or he may allege that he from whom he purchased his fee was seised of this franchise as annexed to that fee so long as he was in possession. But this exception is encounterable by this replication:—'Sir, by this avowry he cannot shield or excuse himself, for albeit such a one his predecessor was seised, he could not alienate such a franchise, for kings never make feoffments in such wise that their feoffees can make assigns.'

Ch. XXVII. De Purprestures.

A purprestures, si li defendant puisse excuser son tort, ne convendra mie qil en respoigne sanz bref nient plus qe al accion de franchises, ne de son propre tort de terre ou de fieu ou des apurtenaunces dever autre qe dever le Roi, ne pur le Roi forqe en sa presence. E si li tort original nen soit mie le fet le defendant, si tient lu voucher garant.

Ch. XXVIII. De Tresor Trove.

Alienacion de tresor trove purra il avouer sil en soit privilege ou auctorize, ou il purra dire qe il meismes li y mist, ou tel autre ou memoire court, par unt le Roi ne iad nule accion.

Ch. XXIX. De Wrek.

Al accion de wrek purra il dire qe li Roi nen ad nul dreit pur ceo qe lan de lautri accion nest mie uncore passie, e en meme la manere de estrai, de weif, e de tote autre chose trovee; ou pur ceo qe len siet a qi les biens estoient qest en pleine vie, ou pur ceo les biens furent pris loinz en la meer e nesceient mie gete a terre par le refoill de la meer.

Ch. XXX. [*D'Usure.*]

A usure porra il dire, qe tut prestat il ses blez en yver pur receivre en septembre solom ceo qe ble se vendroit plus chir en mesn tens, ou tut prestat il ses deners pur receivre ent les meillour deintes par anees pur ceo nest il mie usurer.

Ch. XXVII. Of Purprestures.

As to purprestures, if the defendant can excuse his tort, he need not answer without writ, any more than to an action for franchises, or to an action founded on some wrong done by him in respect of land or fee or appurtenances against some one other than the king, not even at the king's command unless it be in the king's presence. And if the original tort [of purpresture] was not the deed of the defendant, then there may be voucher to warranty.

Ch. XXVIII. Of Treasure Trove.

An alienation of treasure trove one may avow if one has privilege or authority in the matter, or one may say that oneself put the treasure where it was found, or some one else within time of memory, so that the king has no action.

Ch. XXIX. Of Wreck.

In an action of wreck he may say that the king has no right, for that the year given to the other [*i.e.* the owner of wrecked goods] for his action, is not yet passed; and so with waif, estray, or other goods lost and found; or, for that the man to whom the goods belonged is known and alive; or, for that the goods were taken far out at sea and were not thrown on the land by the tide.

Ch. XXX. [*Of Usury.*]

To a charge of usury he may say that although he lent his corn in the winter and was to receive in September the best price that could have been obtained for it during the mean time; or, although he lent his money and was to receive for it the best return[1] by the year—for all this, he was no usurer.

[1] Translation doubtful.

Ch. XXXI. De Chacer.

As accions de chace, de coure, e de peschier purra il dire qil nad nul tort fet, car cest son droit de chacer illoec e de coure, ou est sa common pescherie apurtenant a son fieu de tel lu.

Ch. XXXII. De Obligacion.

Quant a obligacions, purra il dire qe tut soit cele obligacion son fet ele neqedent ne li deit grever cum tele qest viciouse, ou par faus supposcicion, ou pur ceo qe li defendant nen ont unt nul dener ne autre chose a la vaillaunce, ou par entremedlure de peschie ou de malefei, sicom dist est de vicious contractz abatables, ou il purra allegger soute ou quiteclamance, ou plus tardif contract.

A gast, ou par ceo qil nen ad rien fet qe jugeable soit a gast, ou pur ceo qil nen ad rien pris forqe renables estovers par li housbote e heibote, ou il purra clamer fie et tenement par ascun loial title.

Ch. XXXIII. De Atteinte.

Si ascune partie die qe jurours eient fet faus serement en ascune juree, uncore socurt dreit a pleintifs par accion datteinte qe fet aprendre par xxiiij. jurours, si qe chescun tesmoin faus seit atteint de ij. jurours. En que cas si les primers jurours de[1] latteinte bosoigne al actour aver present souz le seal le Roi, ou de la partie, ou del juge, le partes[2] del plee e qe il die en quel point il unt fet faus serement; ou li tenant purra dire qe lactour ne deit estre respondre a cele atteinte par la reson qe li premer jugement nad mie uncore plein effect, pur ceo qe le principal en tut ou en partie, ou endroit de la satisfaction de damages remeint uncore a fornir. Autres excepcions sunt quant a chalenger les persones des jurours, sicom piert en cest chapitre suant.

[1] *denient* (Houard). [2] *proces*?

Ch. XXXI. Of Hunting.

To actions for hunting, coursing or fishing he can say that he has done no injury, because it was his right to hunt and course there, or because it was his common fishery appendant to his fee in such a place.

Ch. XXXII. Of Obligation.

As to obligations, he can say that although this obligation is his deed, it cannot charge him, being one that is vicious, or founded on a false supposal, or because he has received no penny or other thing by way of equivalent, or because of an intermixture of sin or bad faith, as has been said above about contracts that are abateable as vicious; or he can allege payment or quit-claim, or a later contract.

In a case of waste [he may say] that he has done nothing which can be adjudged waste, or that he has taken nothing beyond reasonable estovers for his housebote and haybote, or he may claim a fee in the tenement by some lawful title.

Ch. XXXIII. Of Attaint.

If either party say that the jurors in any jury have made false oath, the law will succour the plaintiff by an action of attaint, which must be taken before twenty-four jurors, so that each false witness may be attainted by two jurors. In which case if the first jurors [contest the falsity of their oath], it behoves the plaintiff to have present under the seal of the king, or of the party, or of the judge, the process of the plea and to say in what particular they swore falsely; or else the tenant may say that the plaintiff should not be answered in this attaint because the former judgment has not yet taken full effect, because the principal matter in whole or in part, or as regards the satisfaction of damages, has yet to be executed. Other exceptions there are which go to challenge the persons of the jurors, as will appear in the following chapter.

Ch. XXXIV. Ordenance datteinte.

Pur ceo q*e* al actour appent a p*r*over sa accion, e al affermant sa affirmacion e ne mie al niant sa negation, e ij. tesmoins covenables solu*n* le dit dieu suffisent a chescun tesmoinage, voellent nos usages q*e* la p*ar*tie affirmative face venir par leide de la court les plus covenables veisins en tesmoignage, tant q*e* une juree se puisse fere al meins de xij. hom*m*es, p*ar* c*er*tein assise a ceo ordene dantiquite, des queux si deux hom*m*es soient p*ar* plein verdit[1] de eus e des autres jurours ou par bon examinement si trestuz les jurours p*ar* cas ne soient mie de . j . assent troeve covenables suffit e si noun ou si les jurours dient touz gen*er*alment qil rien nen soievent, ou soient en doute, ou sil ne dient mie exp*r*essement contre le defendaunt, ou sil dient p*ur* le defendant, en tieux cas fet a juger contre lactour ne p*r*oeve mie suffisaument son dit. E tut voille li defendaunt retorner a autre defense a ceo niert point rescevables. Contre[2] jurours tenent lu chalenges sicom countre tesmoins, en cest manere—'Sire, cist nest mie covenable, pur ceo qil est . j . de ceus q*e* menditent de c*r*im mortel si q*e* en li ne remeint q*e* jeo ne fuisse destrite, e issi mest il mortel enemi, ou pur ascun autre cas de enemiste, ou pur ceo qil est escomenge ou enditee ou appelie de mortel felonie, ou pur ceo qil est[3] a la fei le Roi, ou pur ceo qil estoit autre foiz atteint de faus s*er*ement, ou de faus tesmoinage; ou tele corporele penaunce soffri p*ar* son pecche ou autrement est infamis, ou pur ceo qil est familler ou cosin ou parent ou lallie ou affin de la p*ar*tie adv*er*se,

[1] *soient contraints en verdict* (Houard). Brunner has suggested 'contraires en verdict' (*Schwurgericht*, p. 370). But the text as it stands gives nothing like this.

[2] In the margin, *Excepcions e chalenges countre cestes*.

[3] Corr. *n'est*.

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Ch. XXXIV. The Order of an Attaint.

For that it is the plaintiff's duty to prove his action, and the affirmer must prove his affirmative, not the denier his negative, and according to the word of God two proper witnesses are sufficient for every testimony, our usages decree that the affirming party shall by the aid of the court cause to come the fittest of the neighbours as witnesses, so that a jury may be formed of at least twelve men, as has been ordained by an ancient assize, and if two of these men are by the full verdict of themselves and the other jurors, or (in case all the jurors are not of one opinion) then by good examination of all the jurors, found to be fit witnesses,[1] this is sufficient, and if this be not so, or if the jurors say quite generally that they know nothing or are in doubt, or if they do not find expressly against the defendant, or if they find for the defendant, in such cases judgment must be given against the plaintiff, since he has not proved his assertion. And although the defendant may wish to have recourse to some other defence, he is not to be received to this.

Challenges may be made against jurors, as against witnesses, in this manner:—'Sir, such an one is not a fit juror, for he is one of those who indicted me of mortal crime, so that if I was not destroyed I owe him no thanks for that, and thus he is my mortal enemy:' or some other cause of enmity may be named—or 'because he is excommunicate or indicted or appealed of mortal felony;' or, 'because he is not in the king's faith—or, has been previously attainted of a false oath, or of false witness—or, has suffered such and such a corporal punishment through his sin—or, is otherwise infamous—or, is the familiar, the cousin or kinsman of the adverse party or connected with

[1] This is the only translation that we can give without suggesting large emendations. The author, who has just referred to the canonical rule about two witnesses, seems to require that there shall be among the twelve jurors two men who are proved, by the opinion of their fellows or by an examination made by the judge, to be witnesses of the fact in dispute. But the passage may be corrupt.

ou pur ceo qil est serf ou autrement en garde, ou pur ceo qil est lon vie,[1] ou procurie, ou tenant ladversaire, ou pur ceo qil est femme, ou pur ceo qil fu utlagie, ou pur ceo qil forjura le reaume, ou pur ceo qil se procura destre en la juree, ou pur ceo qil est dedenz age, ou pur ceo qil est lunatic ou frenetic. E plusours autres excepcions de challenges sunt allouables, des queles si ascun soit dedite, soit si chaleng trie par covenables jurours, e solom le triement, seit le jurour rescieu ou rebote. E si nule juree ne se puisse fere a une foiz par defaute de jurours se face a autre.

Ch. XXXV. De Serement fere.

Seremenz varient en plusours maneres dunt li principal serement est de feaute qe est annex a chescun homage issant de fieu, e ascun foiz ist li serement de feautie de reseantise e demoere en autri fieu, e ascune foiz en autri service. Li serement de feautie ceo fet en cestes[2] paroles— Jeo porterai fei a tel Rei par nom de vie e de menbre e de terrien honour sur touz tieux qe vivre porrent et morer, de cest jour en avant si meit deux e les seintes evangires.

Ch. XXXVI. [*De Homage.*]

Homage se fet en cestes paroles: Jeo deviengai votre homme de tiel fieu, issi qe tote la quantite soit moteie e especefie e certein, par quoi li seignur sache cumben e quoi il dout garanter a son tenant, e de combien il oblige son fieu a la garantie, e qe li tenant sache de cumbien il devient son homme.

Ch. XXXVII. [*Feautie annex a Homage.*]

Li serement de feautie annex a homage se fet en cestes paroles—Jeo porterai fei a tel par nom de vie e de menbre ecet. tant cum jeo en serrai soun tenant, sur tuz ceux ecet.,

[1] Corr. *homme* 1642 and Houard. [2] *en cestes* repeated in MS.

him by alliance or affinity—or, is a serf or otherwise in ward—or, is [hired] or procured by or the tenant of my adversary—or, is a woman—or, was outlawed or has abjured the realm—or, has procured himself to be on the jury—or, is within age, or lunatic or frantic.' And many other exceptions by way of challenge are allowable, and if these be denied, the challenge shall be tried by fit and proper jurors, and according to this trial the juror shall be received or repelled. And if for want of jurors a jury cannot be taken at one time, it must be taken at another.

Ch. XXXV. Of Oaths.

Oaths vary in divers ways. The chief is the oath of fealty which is annexed to every homage issuing from a fee, and sometimes the oath of fealty issues from a residence or dwelling on the fee of another, and sometimes from a retainer in the service of another. The oath of fealty is in these words:—'I will bear faith to such a king of life, member and worldly worship against all those who can live and die, from this day forward, so help me God and the holy gospels.'

Ch. XXXVI. [*Of Homage.*]

Homage is done in these words:—'I become your man of such a fee,' so that the quantity of the fee be expressed and specified and certain, and the lord may know how much and in what manner he must warrant to his tenant, and to how much he obliges his fee by the warranty, and the tenant may know for how much he becomes his lord's man.

Ch. XXXVII. [*Fealty annexed to Homage.*]

The oath of fealty annexed to homage is in these words:—'I will bear faith to such an one (naming him) of life and member etc. so long as I shall be his tenant, against all those etc., saving my faith to the oath that I have

sauve ma fei al serement qe jai fet a tel Roi. E si jeo eie jure feaute a autres qe au Roi, adunqe issi, sauve ma fei qe jai jure au Roi e a mes autres seignurages. E si li homagez soit fet au Rei, ou a autre, a qi le tenant eit avant jurie feautie, en teux cas ne covendra mie autrefoiz jurer feautie, si lalliance neit estie rompue par ascun cas.

Ch. XXXVIII. Common Serementz.

Communs serementz se funt en cestes paroles—Jeo veoir dirrai de ceo qe vous me demandrez de cele chose si meit dieux ecet. Les seremenz en assizes se font en cestes paroles :—Jeo voir dirrai del fieu dunt jeo ai la veuue fete par lauctorite de ceste assise—ou del fieu dunt laccion de ceste redesseisine est arramie—ou de la pasture e del fieu—ou de la nusance, ou del mur, ou del fossie, ou del estanc, ou del euue, ou del eglise, ou de la rente, ou del fieu oblie—e pur rien ne lerrai qe voir rien dirrai ecet.

De vie e de menbre e de terrein honur voet a tant cum qe il ne serrai jammes assentant qe li Roi ou son autre seignur eu damage de sa vie ne de nul de ces menbres, nen assentera qe sa honur soit de rien defame en poer nen fame.

Ch. XXXIX. De Acorder.

Pees ne acord ne defent nul droit, par unt bien list a chescun dacorder a son adversaire e relesser e quitclamer son droit e sa accion : pus ceo neqedent qe ascun aura affermee e attame sa personele accion dunt infamie est surdant ne purra nul apeeser del congie le juge, coment qil se pusse sustrere, car chescun actour daccion infamant qe natteint son adversaire solom ceo qil ad atthache sa pleinte est jugeable infamis, al foer qe son adversaire serreit sil en fust atteint. En favour neqedent de sauver homme de la

made to such a king.' And if I have already sworn fealty to others than the king, then I must say thus:—'saving my faith which I have sworn to the king and to my other lords.' And if homage is to be done to the king or to another to whom the tenant has already sworn fealty, it is needless to swear fealty again, unless the alliance has been broken for some cause or another.

Ch. XXXVIII. Common Oaths.

Common oaths are made in these words:—'I will speak truth of that which you shall ask of me about such a matter, so help me God etc.' Oaths in assizes are made in these words:—'I will speak truth concerning the fee of which I have had a view by the authority of this assize—or, concerning the fee about which this action of redisseisin is summoned—or, of the pasture and fee—or, of the nuisance, wall, ditch, pond, water-course, church, rent—or, of the fee burdened with the right in question—and for naught will I let to tell the truth etc.'

The words 'of life and member and worldly worship' mean that he will never assent that the king or his other lord shall have damage in life or in member, or that his honour shall in any wise be diminished in power or fame.

Ch. XXXIX. Of Accords.

No law forbids peace and accord, and therefore everyone may agree with his adversary and release and quitclaim his right and his action. Nevertheless, so soon as one has affirmed and entered a personal action which imports infamy, he cannot make peace without the leave of the judge, though he may 'subtract' himself from his action, for every plaintiff in an action that imports infamy, if he does not attaint his adversary according to the words of the plaint that he has raised, may be adjudged infamous, just as his adversary would have been had he been attainted. However, in order to save from death men who are not

mort qi nen est mie atteint de pecche mortel est suffert qe adverses parties sacordent apres batailles gagees, lune des parties neqedent remeint infamis.

Apeser ne poet nul qe ne seit del age de xxj. an ou de plus, ne nul qest en garde, ne nul par attornee. En garde sunt serfs, femmes espouses, proffes de religion, enfanz dedenz lage de xiiij. ans, heirs foxnastres, heirs sourz e muz, heirs meseaux, e ceux qi sunt en prison e par meinprise, e femmes qe sunt en la garde de lur avoe en qi mariages eles sont.

attainted of mortal sin, the parties are suffered to make accord after battle has been waged, but one of them will remain infamous.

No one can make accord who is not of the age of twenty-one years or upwards, no one who is in ward, no one by attorney. In ward are serfs, married women, those professed in religion, infants within the age of fourteen years, heirs who are born fools, heirs who are deaf and dumb, heirs who are lepers, those who are in prison or under mainprise, and women who are in ward to the 'advocates' who have the right to give them in marriage.

LIBER IV. DE JUGEMENT.

1. De jugement.
2. Ordenaunce de jugement.
3. De jurediccion.
4. Defautes punisables.
5. De defautes.
6. De personele accion.
7. De defaute de real accion.
8. Des accions mixtes.
9. De plegge e meinpernour.
10. De defautes apres somonses.
11. De champeon.
12. De peynes.
13. De infams.
14. De majestie.
15. De arson.
16. De jugement domicide.
17. De peines en divers maneres
18. De faux justices.
19. De perjurie.
20. De office des justices en eire.
21. Des articles en eire.
22. Des fraunchises.
23. De satisfaccion de dette
24. Cas de deseisine.
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BOOK IV. OF JUDGMENT.

1. Of judgment.
2. The order of judgment.
3. Of jurisdiction.
4. Of punishable defaults.
5. Of defaults.
6. Of personal actions.
7. Of defaults in a real action.
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10. Of defaults after summons.
11. Of a champion.
12. Of punishments.
13. Of the infamous.
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15. Of arson.
16. Of the judgment of homicide.
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20. Of the office of justices in eyre.
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26. Of taxable amercements.
27. Of the office of justices in eyre.

LIBER IV.

DE JUGEMENT.

Ch. I. De Jugement.

La flur e la necessaire de lei depent en seint jugement, sanz quel lei ne poet prendre effect ne due fin. E pur ceo fet descendre as jugemenz, qe ne sunt mie en tuz poinz ici solom la reddour del veil testament e les usages uses par Moisen e les prophetes avant la incarnacion dieu, einz isunt solom mitigacion e la temprure de grace e de verite de merci e de dreit, qe dieu memes usa en terre e comanda de user el nouvel testament e qe ces apostres e lur successours unt usez pus sa incarnacion en ca, e solom les jugemenz des auncienes sages en pleez tochanz les usagez de cest reaume.

Ch. II. Ordenaunce de Jugement.

Jugement vient de juresdicion qest la plus grant dignite qe apent al Roi, e sont ij maneres de juresdiccion ordenaire e assigne. Ordenaire ad chescun si pecchie ne la li toille, car chescun poet juger son proene solom les seintes riules de droit. Mes cele juresdiccion est ore restreinte par poir des Rois, en tant qe nul nad poer a tenir plee des trespas ou de dette, qe passe xl s. forqe le Roi, ne nul nad poer a conustre de fieu sanz bref; a chescun neqedent list doccire les mortieux peccheours ou les troez a meinoevre fesanz lur pecchie par bon tesmoignage, par garant de juresdiction

BOOK IV.

OF JUDGMENT.

Ch. I. Of Judgment.

The flower and the essence of the law are to be found in holy judgment, without which the law cannot take effect or attain its due end. And therefore we must pass to judgments. And these are not [to be pronounced] altogether according to the rigour of the Old Testament and the usages that were used by Moses and the prophets before the Incarnation of God, but with mitigation and temperament of grace and truth, of mercy and right, such as God Himself used upon earth, and in the New Testament commanded to be used, and such as the apostles and their successors have used since the incarnation, and according to the judgments of the wise men of old in pleas touching the usages of this realm.

Ch. II. The Order of Judgment.

Judgment springs from jurisdiction, which is the highest dignity belonging to the king. And there are two kinds of jurisdiction—ordinary and delegate. Ordinary jurisdiction has everyone who is not deprived of it by sin, for everyone may judge his neighbour according to the holy rules of right. But this jurisdiction is now restrained by the power of kings, so that none but the king has power to hold plea of trespass or debt, if it exceeds forty shillings, and no one can have cognisance of fee without writ; but still it is lawful for everyone to slay mortal sinners where, having good testimony, he finds them in the very act of their sin,

ordenaire, le quel les peccheours clers ou lais, de non age de plein age, e tuz autres de quele condicion qil soient. E en tieux cas sunt tieux pecches appellez notoires pecchez. Deus maneres sunt de notoritie, notoire de fet e notoire de droit. Notoire de fet, est ou nul contredit ne tien lu ne nul juree nad mestre pur se se testmoinage[1] del poeple. Notoire de dreit est ou les peccheours sunt atteinz de lur pecchiez par lur gehir, ou par jurees des tesmoigns, ou autrement en jugement. Ceste juresdiction ne poet nul clamer par assignacion.

E juresdiccion assigne est cele qe li Roi assigne par ces commissions de ces briefs, car sanz bref ne poet il mie de droit assigner nule juresdiccion si noun en presence e par lassent des parties. Juresdiccion ne poet nul assigner forqe le Roi, e ceo est pur ceo qil ne suffitz mie sanz eide a porter le charge qe a li apent a punir les trespassours e de assoudre les peccheours qil ad a governer. E issi ordenerent nous aunciens . j . seal e . j . chaunceller pur le gardir, e pur doner brefs remediares a tuz pleintifs sanz donger.[2]

Es briefs soleient estre de ceste assise : il furent sanz rasture, sanz entreligneire, sanz faus latin, sans usuele transposicion, e sanz chescun vice de parchemin de encre e de lettre, e escriz de note engleche, de mein notaire conu pur familler de la Chanceller. E soloit contenir les nouns des parties, e la substaunce de la pleinte e le noun del juge e le noun del Roi, ou dautre tesmoin del brief, qe ascune foiz fu escrit al seignur del fieu, ascune foiz as baillifs, ascune foiz as Justices del banc, ascune foiz as Justices en eire, e ascune foiz as genz nomeez, e ascune foiz nient nomeez sicom as baillifs, justices, e viscontes ; e soloit chescun pleintif aver commission a son juge par bref patent avantdit. E ore poent justices, viscountes, e lur clers

[1] *a cause du testmonage.* Houard. [2] *delay.* 1642 and Houard.

and this is warranted by his ordinary jurisdiction, be the sinners clerks or lay, within age or over age, and all others of whatever condition they be. In such cases the sins are called notorious sins. Of notoriety there are two kinds—notoriety in fact, and notoriety in law. Notoriety in fact: this is where no denial is possible and there is need of no jury by reason of the testimony of the people. Notoriety in law: this is where the sinners are attainted of their sin by confession or by jurors who bear testimony, or otherwise in court. Jurisdiction of this kind no one can claim by assignment.

Assigned [or delegated] jurisdiction is that which the king assigns by the commissions of his writs, for without writ he cannot lawfully assign any jurisdiction, unless it be in the presence and with the assent of the parties. No one can assign jurisdiction but the king, and he may do this because he is not able to bear without assistance the charge that belongs to him for the punishment of the trespassers and the absolution of the sinners whom he has to govern. And therefore our forefathers ordained a seal and a chancellor to keep it and to grant remedial writs to all plaintiffs without [charge].

Writs used to be of this fashion: they were without rasure, interlineation or false Latin, without transposition,[1] without any flaw in the parchment, in the ink, or the writing, and they were written in English characters in a hand well-known as that of the Chancery. And they contained the names of the parties, the substance of the plaint, the name of the judge, and the name of the king or other the witness to the writ. Sometimes they were addressed to the lord of the fee, sometimes to the bailiff, sometimes to the justices of the bench, sometimes to the justices in eyre, sometimes to men whose names were given, sometimes to men whose names were not given, but who were addressed as bailiffs, justices, or sheriffs; and every plaintiff had a commission to his judge by writ patent as aforesaid. And now justices, sheriffs, and their clerks can falsify and sup-

[1] We cannot translate the *usuele* of the text.

forger brefs e retrere, perdre, amender e empeirer sanz apertenaunce ou peyne, pur les briefs qe se funt clos par abusion de droit. Par cele seal soulement est juresdiccion assignable a touz pleintifs sanz difficultie; e de ceo fere est li chaunceller chargeable par serement en alleggeaunce del charge le Roi qil vendra delaera ne veera droit ne brief remedial a nul.

Ch. III. De Jurediccion.

Jurediccion est poer a dire dreit. Cele poer dona deux a Moysen e cel poer unt ceaux qi tenent ore son lu en terre, sicom lapostoill e lempereur, e de souz euz tient ore le Roi cele poer en son reaume.

Li Roi par lauctorite de sa dignitie fet cel[1] justices en divers degrez e limite chescun poer, e ceo en diverses maneres, ascune foiz en certein especialment sicom en commissions de menues assises, ascune foiz en certein generalment sicom est des commissions des justices errantes, e des chiefs justices tenaunz les pleez le roi, e as justices del banc as queux poer est donie doir e a terminer les fins nient tenues, les grantz assizes, les translacions des ples e les droiz le roi e de la royne de ces fieus, e les paroles de briefs le Roi ou il sunt nomez generalment e ou especialment. Estre ceo unt les barons del escheqer jurediccion sur les recevours e les baillis le Roi e sur alienacions des fieus e droiz appendaunz au Roi e al droit de sa coroune. Ascune foiz est jurediccion done as viscountes par autri defautes, sicom piert el brief de droit qe dist E si vous nel tiegnez a droit le viscount del pais ferra; ascune foiz par ceux qi unt retourn de brefs retornables. Ascune foiz accrest jurediccion as justices del banc par remeuemenz des paroles hors des contiez requis[2] par devaunt les ditz justiciers, e ascune foiz par fere recordir les paroles vivees[3]

[1] Corr. *ses*. [2] Corr. *jesques*.
[3] *tenues*, Houard; corr. *moves* or *mues*?

press and lose and amend and impair writs without discovery or punishment, because the writs now are close writs by an abuse of the law. And by the said seal only is jurisdiction assignable to all plaintiffs, and no difficulty should be made; and the chancellor is charged to do this, by oath upon his allegiance, for he is charged by the king that he will not sell or delay or deny remedial writ to anyone.

Ch. III. Of Jurisdiction.

Jurisdiction is the power *jus dicere*. This power God gave to Moses, and this power have those who now hold His place upon earth, such as the pope and the emperor, and beneath them the king has now this power in his realm.

The king by the authority of his dignity makes his justices in divers degrees and limits to each his power, and this in various ways, sometimes for one special case, as in the commissions for the petty assizes, sometimes with a greater generality, as in the commissions of the justices in eyre, and of the chief justices who hold the pleas of the king, and of the justices of the bench, to whom power is given to hear and determine cases of the infringement of fines, grand assizes, pleas that have been removed into their court, and those which concern the rights of the king or the queen in respect of their fees, and suits founded on the king's writs, where they are named generally or specially.

Beside this, the barons of the exchequer have jurisdiction over the king's receivers and bailiffs, and over the alienation of fees and rights belonging to the king in right of his crown. Sometimes jurisdiction is given to sheriffs on default being made by others, as appears when a writ says *Quod nisi feceris, vicecomes meus de comitatu illo faciet;* and sometimes by the default of those who have the return of returnable writs [*i.e.* the franchise *returnus brevium*]. Sometimes jurisdiction accrues to the justices of the bench, as when causes are removed out of the county courts, that they may come before the said justices; and sometimes in

en menues courtz sanz brefs requis [1] par devaunt les justices del banc ; mes sicom tieux recordz ne devient valer as pleintifs si noun apres jugementz renduz qe les paroles [2] sunt returnables requis [1] apres lur jugemenz, e sicom les paroles muez sur le brief de dreit sunt rechaceables es courz des seignurs es, ou lur seignurs ne y unt point faillez de droit, aussi sunt les paroles remuees par pone returnables es countiez es cas ou les parties ne parurent unt en court pur pleder.

Al office de chief justices appent des torcenouses jugemenz e les tortz e les errours dautres justices redrescer e punir ; par bref neqedent de fere venir devant le Roi le proces e le record ovesqe le bref original. E par devant teles justices suns touz brefs pledables returnables e terminables ou mencion est fete devant le Roi mesmes, e les briefs nient pledables returnables devant le Roi sunt returnables en la Chancellerie. E si appent a lur office doir e terminer totes pleintes fetes de personeles tortz fetz a xij lues dentour le roi e des gaoles deliverer des persons deliverables, e a terminer quanqe est terminable par justices erranz, e plus e meins solom la nature de lur commission.

Dautre part est une manere de jurediccion qest appelle arbitraire, qe nest ordenaire ne assigne ; sicom est cele qe vient de lassent des parties adverses.

De jurediccion vient jugement, qad plusours significacions. En lune est jugement au taunt adire com absolucion de pecchie. En autre a tant cum sentence qe ascune foiz soune en bien come de guerdon, e daquitaunce de peyne, e ascune foiz en mal com escomenge. E en autre autant come issue de plee e fin de jurediccion assignee, qe poez estre a tens ou james ; a tens, sicom ascune excepcion

[1] Corr. *jesques.* [2] *rendus par ceux a qui les paroles.* Houard.

order that record of suits [pending] in the inferior courts without writ may come before the justices of the bench; but whereas the *recordari facias* ought not to avail a plaintiff until after judgment has been given [by those to whom] the suits ought to be returned, and as suits begun by writ of right are to be sent back from the bench to the courts of the lords in case the lords have not made any default of right, so also suits which have been removed by *pone* are to be returned to the county courts in case they were removed before the parties had ever appeared in the county courts for the purpose of pleading.

To the office of the chief justices it belongs to redress the wrongful judgments, the wrongs and errors of other justices, and to punish them; but this must be done by writ *Quod venire facias coram ipso rege processum et recordum cum brevi originali.* And it is before these justices that all writs are pleadable and returnable and to be determined in which are the words *coram ipso rege*, and writs which are not pleadable and returnable *coram rege* are returnable in the chancery. And it belongs to their office to hear and determine all plaints of personal torts done within twelve leagues round the place where the king is, and to deliver the gaols of all prisoners who are deliverable, and to determine all that is determinable by justices in eyre—but their power may be greater or less according to the nature of their commission.

And again there is a kind of jurisdiction which is called 'arbitral,' and which is neither 'ordinary' nor 'assigned'; such is that which comes from the agreement of the parties.

From jurisdiction arises judgment, but judgment has several meanings. In one of these judgment is the same as absolution of sins. In another it is the same as sentence, which sometimes sounds in good, as when it is for a reward, or for an acquittal from punishment, and sometimes it sounds in ill, as when it is for excommunication. In another sense judgment is the issue of a plea and the end of an 'assigned' jurisdiction, and this may be a temporary or a final end: temporary, as when there is a dilatory excep-

dilatoire ou laccion remeint enterre, a james sicom par sentence diffinitive sur laccion.

Jugemenz varient solom les variaunces des pecchiez; des semblables pecchiez neqedent semblables jugemenz; car les pechiez mortiels solom le garant del viel testament sassoillent par la mort en terre, quant as jugemenz de lais juges. Car el viel testament est troevie qe dieu comanda a Moysen qil ne suffrit point les felouns vivre, issi qe peyne temporele allegge peccheours de la perpetuele. Mes einzces [1] qe plus soit parle de peynes, fet a veoir par quele introduccion peccheours sunt contumax chaceables de parer en court e par queux jugemenz.

Ch. IV. Defautes Punisables.

Defautes sunt punisables en plusours maners. En appeals de felonies sunt eles punisables par le jugement de utlaguerie le quel jugement est tel qe puis ceo qe ascun eit eistie solempnment criez e demandie de venir a la pees le Rei par iij countiez continuelement pur felonie, e point ne vient, qe des adunc le tiegne lem pur lou e est criable Wolvesheved, pur ceo qe lou est beste haie de tote gent; e des adunc list a chescun del occire al foer de lou. Dunc custumie soloit estre de porter les testes al chief lu del countie, ou de la franchise, e soloit len aver decim [2] marcs del contie pur chescun teste de utlague e de lou. E tiex futifs forfunt par lur contumace le reaume, le pais, ames, e quanqest de la pees e a la pees, e tote manere de droit qil unqe urent par ascun title e tote manere de lei e ne mie soulement a eus mes a eux e a lur heirs a touz jours. Dautrepart tote consideracion [3] de homage, dalliaunce, daffinitie, de service, de amunitie,[4] des seremenz, e de tote manere dobligacions entre utlaguez e autres de meillur condicion se derumpent, desiognent e se defunt par tiel jugemenz, e tote manere de dons, ventes, e contractz en [5] totes maneres daccions qil urent ver queuqes persones

[1] Corr. *einz ceo.*
[2] *demi.* 1642 & Houard.
[3] Corr. *confederation?*
[4] Corr. *amistie.*
[5] Corr. *e.*

tion but the suit remains in its integrity; final, as when there is a definitive sentence in the action.

Judgments vary as sins vary; but for like sins there should be like judgments; for mortal sins according to the warrant of the Old Testament are absolved by death upon this earth, so far as lay judges are concerned. For in the Old Testament it is found that God commanded Moses that he should not suffer felons to live, so that a temporal punishment excuses sinners from the eternal punishment. But before we say any more of punishments we ought to see by what means and by what judgments contumacious sinners can be driven to appear in court.

Ch. IV. Of Punishable Defaults.

Defaults are punishable in divers ways. In appeals of felony they are punishable by judgment of outlawry, which judgment is this, that when on account of a felony anyone has been ordered by solemn cry to come to the king's peace in three successive county courts, and he does not come, then he shall be accounted a wolf, and 'Wolfshead!' shall be cried against him, for that a wolf is a beast hated of all folk; and from that time forward it is lawful for anyone to slay him like a wolf. And there was a custom to bring the heads to the chief place in the county or the franchise, and one received ten marks from the county for the head of every outlaw or wolf. And these fugitives forfeit by their contumacy the realm, the peace, their friends and all that is of the peace or at the peace, and every kind of right that they ever had by any title, and all manner of law, not only for themselves but for their heirs for ever. And again, all confederation of homage, alliance, affinity, service, friendship, oaths, and all manner of obligations between outlaws and those of better condition are broken, disjoined, and undone by the judgment, and all manner of gifts, sales, contracts, and all manner of actions which they had against any are annulled,

aventissent, e ne mie soulement puis cel jugement mes puis le tens de sa felonie pur laquele tiel jugement se fist, e ces adunc ne purrent il jaimes resortir a respondre de la felonie si li proces neit este vicious, si noun par grant merci [1] e grace du Roi. Femmes estre pleives e mises en diseine a foer des hommes einz furent weives.

Ch. V. De Defautes.

Cil personels accions veniales solerent defautes estre puniez en ceste manere, lemprist des defendaunz a la vaillaunce des demande en biens moebles ou nient moebles, e puis furent somons doir lur jugemenz de lur defautes. E par defaute apres defaute torn jugement pur les pleintifs. Pus changea cel usage el tens le Roi H. le primer qe nul franc home ne fust destreint par le cors pur personele accion veniale tancum il eust fieu, en quel cas li jugement de defaute se fist, tant qe al tens le Roi Henri le tierz, qe li pleintif recoverat seisine del fiux a tenir en demeine apres defaute iequis a due satisfaction, issi qe defaute fust plus damageous as contumaz qe profitable.

Ascuns accions sont personeles el non, e mixtes en le introduccion sicom de naifte, daconte, de covenant, e de ve de naam. E ascunes accions sunt qe tut soit qeles savourent de personeles accions e reales quant al introduccion neqedent ne tienent mie les reulles des accions dunt eles savourent, sicom es reconussances de menues assises; es queles si les tenanz fasent defautes, pur ceo nappent nule destresce ne prise de fieu ou dautre chose en la mein le Roi, einz sunt les reconussaunces pernables aussi com doffice e les jugemenz pronunciables solom le verdit des jurours en despit de teles defautes.

[1] The ed. of 1642 and Houard have a different punctuation.

and not merely as from the date of the judgment but as from the date of the felony in respect whereof the judgment is given, and from thenceforth he never can go back [behind the outlawry] to a denial of the felony unless the process of outlawry was vicious, except it be by the great mercy and grace of the king. Women are [not] pledged and put in tithing like men, but are waived [instead of being outlawed].

Ch. V. Of Defaults.

In venial personal actions defaults were punished thus: one took from the defendant moveable goods or immovables to the amount of the demand, and then they were summoned to hear judgment on their defaults. And on default after default judgment was given for the plaintiff. Afterwards the usage was changed in the time of king Henry I. so that no free man should be distrained by his body in a venial personal action so long as he had a fee, in which case judgment was given by default, [and this was so] until the time of king Henry III., so that the plaintiff, after the default, recovered seisin of the fee to hold in demesne until due satisfaction was made, so that a default brought more damage than profit to the person guilty of contumacy.

Some actions are personal by name, but mixed in their introduction, such as 'naifty,' 'account,' and 'vee de naam.' And there are some actions which savour of personal actions or of real actions in their introduction, but which, nevertheless, do not observe the rules of the actions of which they savour; such is the case in the 'recognitions' of the petty assizes; for if in these the tenants make default, there is no distress and no taking of the fee or any other thing into the king's hand, but they are taken as if they were recognitions *ex officio*, and the judgments are pronounced according to the verdict of the jurors notwithstanding such defaults.[1]

[1] In the petty assizes the mesne process is not directed against the thing in dispute. Bracton would not have called them real actions.

Ch. VI. De Personele Accion.

En *per*soneles accions veniales ou les defendanz ne sunt mie [1] fieu tenanz soloient les defautes estre punies en ceste man*ere*: en *pri*mes soloit len agardir aprendre les cors, e ceux qi ne furent trovez furent mis en exigende en queqe court q*e* li ple fust, e furent p*ar* iij courtz soulement demandez e criez, e sil ne parussent a la quarte court, adunq*e* furent il baniz de la juresdiccion le seignur ou baillis de la court a anees ou a james solom les quantites des trespas.

Ch. VII. De Defaute de Real Accion.

Les defautes de reales accions sunt punissables en cest man*ere*: a la p*ri*mer defaute est la demande ou a la vaillaunce p*er*nable en la main le seignur de la court, e les tenaunz sunt somonables doir lur jugement des defautes; ou apres apparaunce, en est la seisine jugeable as actours a tenir el noun de destresce tant q*e* dreit jugement len oustre; e si ascun viegne en court en p*ri*mes plevisse la chose demaunde e sanz delai respoigne a la defaute. En quel cas il purra dedire la somonsz, ou pur ceo qil nen fu unk*e* somons ou nient renablement somons, e a ceo purra il estre a sa lei countre le testmoinage des somenours, tut soient il p*re*senz; e sil fornist sa lei meintenant respoigne al accion ou a la pleinte.

Ch. VIII. Des Accions Mixtes.

Des mixtes accions sunt defautes punissables en ceste manere: les defendanz sunt distreignables p*ar* touz biens moebles e fieus, sauve qil ne soient engetez de lur possessions, de court en court tant q*e* il perent e respoign*ent*, e les issues deviegnent as proffiz des seignurs des courz.

[1] MS. repeats *ne sunt mie*.

Ch. VI. Of Personal Actions.

In the venial personal actions, if the defendants are not fee tenants, defaults used to be punished in this wise: in the first place it was awarded that their bodies should be taken, and if they could not be found they were put in exigend in whatever court the plea was, and they were demanded and cried for in three courts and no more, and if they did not appear at the fourth court, they were banished from the jurisdiction of the lord or the bailiffs of the court for years or for ever according to the amount of the trespass.

Ch. VII. Of Default in a Real Action.

Default in a real action is punishable thus: on the first default the thing demanded or its value is taken into the hand of the lord of the court, and the tenant is summoned to hear judgment of the default; but if the default be made after appearance, then the seisin is awarded to the plaintiff to hold by way of distress until he shall be ousted of it by lawful judgment; and then, if the tenant appears, in the first place he must replevy the thing that is demanded, and then must without delay answer for his default. And in this case he may deny the summons, saying that he was never summoned or never duly summoned, and about this he may make his law against the testimony of the summoners, although they be present; and if he can furnish his law he shall answer then to the action or the plaint.

Ch. VIII. Of Mixed Actions.

Defaults in mixed actions are punishable thus: the defendants are distrained by all their movable goods and their fees, save that they are not ejected from their possessions, and this from court to court until they appear and answer, and the issues come to the profit of the lord of the court.

Ch. IX. De Plegge e Meinpernour.

Plegge e meinpernours sunt dune signifiaunce tut diversent il es nons; mes pleges sunt ceaux qe plevissent autre chose qe cors de homme, sicom en reales accions e mixtes; meinpernours sont en personeles accions soulement ceux qi plegent cors de homme. Sauf pleges sunt qe suffirent[1] a rendre la demande ou la value, e soient feaus humes e fieu tenaunz de celi a qi la pleinte est fete e en qi court le ple iert attamable, e si ascun pert son cors ou son fieu pur defaute, assez est puni tut ne soit il mie amercie, mes adunc aprimes est li peccheour amerciable quant il est paru en jugement, e ne poet son tort escuser ne sa defense saver.[2] E sicom nul qe rent avant somonse nest amerciable, aussi nest nul pleintif amerciable ne ses pleges de suire par noun sieute, ou li tenaunt rend solom le comaundement del garant de la somonse, ou autrement en face satisfaccion. Sicom es cas ou li rei comande al viscount qil comaunde a tel de rendre ou de fere, e sel ne face e li pleintif face sieurtie de sur, qe adunc le face somondre, ou attacher, destre[3] e cet., en quei cas si li viscounte namoneste le tenant de rendre ou de fere solom les poinz del garaunt, einz ces[4] qil preigne sieurte del pleintif il fet tort. Mes adunc a primes sunt pleintifs e lur pleges de suire amerciables quant les defendaunz se proffrent en jugement countre eus ou il funt defaute par non sute.

E aussi font ceux viscountes tort qe soursient a fere les execucions des comandemenz le Roi einz ces[4] qe les pleintifs eient trove sieurte de sure les pleintes, ou nule mencion ne se fet es brefs de sieurtie fere.

[1] Repeated in MS.
[2] Corr. *defaute sauver.*
[3] *Dedens.* Houard.
[4] Corr. *ceo.*

Ch. IX. Of Pledges and Mainpernors.

Pledges and mainpernors are all one, though they have different names; but pledges are those who pledge something other than a man's body, as in real and mixed actions; mainpernors are found in personal actions only, and they pledge a man's body. Safe pledges are those who are sufficient to render the thing in question or its value, and are free men and fee tenants of him to whom the complaint is made and in whose court the plea is to be commenced, and if anyone loses his body or his fee by a default, this is punishment enough without his being amerced, but the sinner is not at once amerciable until he has appeared in court and has not been able to excuse his tort or salve his default. And as no one is amerciable who appears before summons, so also the plaintiff and his pledges for prosecution are not to be amerced for a non-suit if the tenant renders according to the words of the writ which warrants the summons, or otherwise makes satisfaction. Thus if the king bids the sheriff order a certain person to render or to do something and that if he does not do it and the plaintiff finds surety to sue, then he is to summon, attach, or distrain the defendant etc., in this case if the sheriff does not admonish the defendant to render or to do according to the terms of the warrant, but at once takes security from the plaintiff, he, the sheriff, does an injury. So the plaintiff and his pledges for prosecution do not become amerciable until the defendant proffers himself in court against them and the plaintiff then makes default by non-suit.

And those sheriffs also do wrong who defer to execute the commands of the king until the plaintiffs have found surety for the prosecution, when the writs make no mention of any requirement of surety.

Ch. X. De Defautes apres Somonses.

Sicom defautes se font de *per*sones, e aussi se fu*nt* de choses, sicom de *ser*vices issanz de fieus dunt fieus sont enservez. E dunt si rente, suite ou autre *ser*vice soit arere a ascun seignur de son fieu pur ceo nest mie li tenant destreignable *par* ses biens moebles, einz appent a fere somondre tieux tenantz pur saver les defautes ou *pur* satisfaccion fere, ou *pur* respondre purquoi tieux *ser*vices duz de lur possessions sont areres a lur seignurs; e sil ne viegnent a somonses, *par* lagard des sieute*re*s sunt les fieus *per*nables en la main les seignurs, tant q*e* il se justicent *par* pleges, e il sunt estre ceo somonables doir le jugement de lur defautes; e tut ne viegne ascune *par* la secunde somonse, pur ceo nest il mie am*er*ciable einzces [1] qil viegne; uncore purra il rendre le fieu, ou alleger *pri*vilege, ou dire chose pur qi il ne dust a la somonse obeir. E si le seignur neit court *pro*pre ne sutiers, ou ne seit mie de poer de justicier ses tenanz en manere avantdit, e adunq*e* tient lu de ce fere en countie, ou en hundred, ou aillurs en la court le Roi, ou al drein *par* bref de custumes e dē *ser*vices e autre briefs remediaux. E si ascun eit meesn qi aquit*er* le dust, pur ceo nest li seignur de rien *per*daunt de son dreit, tut ensoit il delaie, einz se preigne li seignur a son fieu sicom dist est, e le tenant recoevre ses damages *par* ou il purra, e rette a sa folie dentrer ou demorir en autre fieu sanz le gre le seignur. E si ascun se ouste dautri fieu e de son terre feffe ascune *cer*te *per*sone a tenir de li e se fet moien *par* entre le seignur e le tenaunt en *pre*judice del seignur en tel cas soloit droit tenir le cours apres dist.

[1] Corr. *eins ceo.*

Ch. X. Of Defaults after Summons.

As there may be default of persons, so there may be default of things, *e.g.* of services issuing from a fee which is bound to render them. And if rent, suit, or other service due to any lord from his fee be in arrear, the tenant is not to be distrained by his movable goods, but ought to be summoned to salve his default, or to make satisfaction, or to answer why the services due to his lord from his possessions are in arrear; and if he does not appear on the summons, then by the award of the suitors of the lord's court the fee is to be taken into the lord's hand until he shall find pledges that he will submit to justice, and in addition he is to be summoned to hear judgment for his default; and if he comes not at the second summons, he is not amerciable for that until he appears, for he may still surrender the fee, or allege a privilege, or give some reason for not having obeyed the summons. And if the lord has no court or suitors of his own, or has not the power to do justice on his tenants in manner aforesaid, then this is to be done in the county, or in the hundred court, or else in the king's court, or in the last resort by a writ of 'customs and services,' or some other remedial writ. And if the tenant has a mesne [lord] who is bound to acquit him, the lord by this loses nothing of his right, though he may be delayed; but the lord as aforesaid shall betake himself to his fee and the tenant may recover his damages wherever he can do so, and he must account it his own folly that he entered or abode in another man's fee without the leave of the lord. And if anyone alienates another's fee and enfeoffs a third person of the tenement to hold of him (the alienor), and thus makes himself a mesne between lord and tenant, to the prejudice of the lord, in that case the law used to take the course which will be described below.

Ch. XI. De Champeon.

Si ascun face ou die a son seignur de qi il tient chose q*e* li court a damage de son cors, ou a sa desheriteson, ou a g*ra*nt deshonur, p*rime*rement p*ar* agard de son court ou dautre est tiel somonable sil seit soun tenaunt, e puis sil fet defaute est destreingnable p*ar* son fieu, ou p*ar* la[1] seignurie taunt qil viegne ; e sil piert e ne se puisse aquit*er* p*ar* la lei sei xij demein ou meins solom lagard de la court, si iert desheritable del tenaunce qil tient del seignur en tiel fieu p*ar* le jugement des suitiers. E issi covient q*e* les tenaunz dep*ar*tent de lur mesons,[2] e se chev*en*t as chiefs seignurs. E si ascun dedie s*er*vice qil deit, purra estre dit de p*ar* le seignur q*e* atort le dedist el tut ou en p*ar*tie, e pur ceo atort e c*et.*, e issi outre contaunt de la seisine e p*ar* mi qi mein[3] e puis issi e q*e* tiel soit le dreit e c*et.*, sicom ap*re*s iert dist. E le tenaunt purra eslire a defendre cel droit p*ar* soun cors ou p*ar* autre, ou descendre en la g*ra*nde assise e prier reconoissaunce li quel il eit majour droit a tenir tiel fieu especefie de A. quite de tiel s*er*vice sicom il tient, ou le dist A . daver le dit fieu en demeyne sicom il cleime.

E si le defendaunt voille son droit deffendre p*ar* le cors dautri, distincter, car si laccion soit p*er*sonele ne lestovera mie aver suite p*re*sent, e si laccion seit reale e le tenaunt eit son champion p*re*sent, adunq*e* covient q*e* lactour p*re*sente le son champion contre le champion del defendant, ou il piert son counte e son bref; e li defendaunt neit mie

[1] MS. has a space at this point; a word is apparently omitted.

[2] Corr. *mesnes*.

[3] *Il prouve q*e *mesme le tenant a payé.* Houard.

Ch. XI. Of a Champion.

If anyone says or does to the lord of whom he holds anything which makes for the damage of his body, or for his disherison, or for his great dishonour, in the first place by the award of the lord's court or some other court, such person, if he is the lord's tenant, is to be summoned, and then if he makes default he is to be distrained by his fee, or by his seigniory, until he appears; and if he appears and cannot acquit himself by his law with twelve hands or fewer according to the award of the court, then he shall be disinherited of the tenancy which he holds of his lord in that fee by the judgment of the suitors. And therefore it is fit that the tenants shall leave their mesne lords and achieve themselves immediately to the chief lords.[1] And if anyone denies a service that he owes, then on the part of the lord it may be said that wrongfully he denies it, in whole or in part, and wrongfully because etc., and so forth, the lord counting on the seisin that he has had of the service by the hand of such an one whom he names, and then going on to say 'and that such is his right etc.' as will be explained below. And the tenant may elect to defend that right by his own body or by that of another, or may descend to the grand assize and pray that a recognition be made whether he hath greater right to hold the said fee of A [the lord] acquitted from that service as he now holds it, or the said A to have the said fee in demesne as he claims it.

If the defendant wishes to defend his right by the body of another, then we must distinguish, for if the action is personal, then it is not necessary for him to have present any suit; but if the action is real and the tenant has his champion present, then the plaintiff must present his champion against the defendant's champion, or he loses his count and his writ; but if the defendant has no champion

[1] If the mesne lord drops out of the tenure by forfeiting his rights, the sub-tenant must achieve himself [*se accapitare*] to the superior lord, whose immediate tenant he now becomes.

champion present, adunc sont les parties aiornables sil soient descenduz en bataille qe eles eient lur champions a la proscheine court. Sicom piert el proces de Saxling a qi Hunstan sestoit oblige en x li. de dette par escrit obligatoire fet a Rome, lequel Hunstan dedist qe point nestoit son fet ; a quoi Saxling respondi par replicacion qe atort le dedit, e pur ceo atort car il lenseala de son seal, ou del seal tiel, qil empromta de li tel jour tiel an e tiel lu : e sil le vousist dedire prest fu del prover par son cors A . qe le vi, ou par B. ou C. qi le virent, e si de eus misavenist prest fu del prover par autre qi poeit e deveit. E issi piert qe nest mie mester dever suite present en teles personels accions le primer jour, einz fet aiorner les parties sicom il est dit. E si ascun qe ne poetz est covenable en testmoignage, ou qi seit champions lonuriz [1] se proffre pur lune des parties a cumbatre qe ne fu mie avant nomie pur fere la bataille, e la partie adverse le chalenge e demande jugement de la defaute, en tiel cas se fet jugement contre le proffrour. E sil mesavient a ascun champion pur quoi il ne puisse cumbatre solom son proffre, nul nest recevable pur li a fornir la bataille forqe son einzne fille [2] legitime, sicom avant est dit. E si le champion le tenant soit vencus par tant se dejoint tote homage e tote alliance e touz seremenz de feautie e tut homage par entre le seignur pleintif e li tenaunt defendaunt, e li seignur recoevre son fieu a tenir en demeine, aussi com il recoverret par la grande assise. E si li champion le seignur seit vencu a dunc iert li jugement qe li tenaunt tiegne a remenaunt del seecle son fieu quite del service mis en la demaunde.

E si le Roi face tort a ascun de ses hommes fieus tenanz de li en chief, si est tenable meme le cours, ou les contes as parlemens e les autres siuters en unt la jurediccion, de

[1] *inconnu.* Houard. [2] Corr. *fils.*

present, then the parties, if they have submitted to battle, must be adjourned to the next court, in order that they may then have their champions present. And this appears in Saxling's case: Hunstan had bound himself in a debt of ten pounds to Saxling by an obligatory writing made at Rome; Hunstan denied the writing as 'not his deed'; Saxling answered by way of replication, that wrongfully did Hunstan deny it, and wrongfully for that it was sealed with his seal, or with the seal of such an one which [Hunstan] had borrowed in such a day, year, and place; and [Saxling added] that if Hunstan would deny this, he, Saxling, was ready to prove it by the body of *A*, who saw it, or by *B* or *C*, who saw it, and if any mischance should befall them, then by another who could and would prove it. And thus it appears that there is no need to have suit present on the first day in these personal actions, but, as already said, the parties may be adjourned. And if anyone who cannot be a proper witness, or who is a hired [?] champion and was not named when the battle was waged, proffers himself to fight for one of the parties, and the adverse party challenges him and demands judgment of the default, then judgment must be given against him who proffers this champion. And in case any mischance happens to a champion so that he cannot fight according to his proffer, no one may be received to do battle in his stead, unless it be his eldest legitimate son, as has been said above.[1] And if the champion of the tenant is vanquished, thereby all homage, alliance and oaths of fealty and homage between the lord who is plaintiff and the tenant who is defendant are undone, and the lord shall recover his fee to hold in demesne, as he would have recovered it by a grand assize. And if the lord's champion is vanquished, then the judgment is that the tenant do hold his fee for ever quit of the service that has been demanded.

If the king does any tort to any man of his who holds a fee of him in chief, the same procedure is to be observed, but the earls in parliament and the other suitors there have

[1] P. 109.

teles causes oïr e *ter*miner pur q*e* le Roi ne poez p*ar* li ne p*ar* ses justices les causes *ter*miner, ne les jugemenz p*ro*nu*n*cier ou li roi est actour. E sicom les seignurs poent chalen*ger* lur tenaunz de torz e de despit fez a euz entre les articles de lur feautie, en meme la manere sunt les seignurs chalengeables de tortz e despiz featez p*ar* eus a lur tenauntz, e si les seignurs ne deignent de parer en jugement a respondre a lur tenaunz, a dunc fest agarder q*e* les tenaunz mes ne facent service pur lur fieus einz ceo [1] q*e* les seignurs les eient responduz.

Ch. XII. De Peynes.

De [2] peine est satisfaccion de trespas ou de pecchie. Deus maneres sunt de peine, voluntire e violente. Voluntire est cele q*e* tient son actour de son gre, sicom est en com*pro*misses, pur chacer gentz a tenir lur contractz : mes de celes peines ne sentremet mie droit. Des peines violentes dunt dreit sentremet sont ij maners, corporele e peccuniele. Des corp*o*reles sunt ascuns morteles, e ascuns veniales. Des mortels se funt ascuns p*ar* perte de testes, ascuns p*ar* longe t*ra*yne, ascuns p*ar* pendre, ascuns p*ar* arson, ascuns p*ar* vif enfoeure, ascuns p*ar* saut de faleise ou dautre lu p*er*ilous, e ascuns p*ar* noer e ascuns autrement solon aunciens p*ri*vileges ou usages. Les pecchiez q*e* demaundent morteles peines sunt les pecchiez mortiels. Des veniales peines corporeles ascuns se funt p*ar* pierte de menbre sicom la felonie de mahain en cas de toute de menbre, ascuns p*ar* pierte del poueir [3] cu*m* est de faus notaires, e de cillours de bourses oveq*e* larcin de meins de xij d. e plus de vj d., e q*e* p*ar* le roi Richard se changea a la p*er*te doreille, ascuns p*ar* perte des bous des langes com soleit estre de faus tesmoins, ascuns p*ar* plaie, ascuns p*ar* enp*ri*sonem*en*t sicom pur enp*ri*sonement, ascunes p*ar* p*er*te de touz biens moebles e noun moebles sicom de faus

[1] *ces* MS. [2] Omit *De*. [3] *pouce* ? (Houard).

jurisdiction, for the king cannot hear and determine such causes or give judgment in them by himself, nor by his judges, because the king is plaintiff. And as the lords may challenge their tenants for tort and despite done to them within the terms of their fealty, so the lords may be challenged for tort and despite done by them to their tenants; and if the lords will not deign to appear in court to answer their tenants, then it should be adjudged that the tenants do them no service for their fees until the lords have answered them.

Ch. XII. Of Punishments.

Punishment is satisfaction for a trespass or a sin.

There are two kinds of punishments, (1) voluntary, (2) violent. A voluntary punishment is one to which a man submits himself of his own free will, as in the case of a compromise, and thus men may be driven to fulfil their contracts; but with such punishments the law does not concern itself. It concerns itself with violent punishments, which are of two kinds, (*a*) corporal, (*b*) pecuniary. Of corporal punishments some are mortal, some venial. Of mortal punishments some are by loss of head, some by a long 'drawing,' some by hanging, some by burning, some by burial alive, some by leap from a cliff or other perilous place, some by drowning, and some otherwise according to ancient privileges or usages. The sins which demand mortal punishments are the mortal sins. Of venial corporal punishments some are by loss of limb (as for the felony of mayhem where a member has been destroyed), others by loss of thumb (such is the punishment of false notaries, and of the cutting of purses with larceny of less than twelve, but more than six pence, but King Richard substituted for this the loss of an ear), others by loss of the tip of the tongue (as was the case with false witnesses); some by wound, some by imprisonment as a punishment for false imprisonment, some by loss of all goods movable and immovable (as in the case of delegated judges who give

juges assignez, e sicom est de usuriers atteinz de usure apres lur deces, mes ne mie sil en soient atteinz en lur vivant, car adunc ne perdent il forqe soulement les biens moebles, pur ceo purrent amender par penaunce e repentaunce e aver heirs, ascuns par exil e abjuracion de la cristienetie, ou del reaume ou de la ville ou del fieu e anees[1], sicom est de ceus qi sunt atteint en personeles trespas e ne unt poer a fere satisfaccion, ascuns par ban sicom dist est de contumaz en personels accions veniales nul fieu tenaunz, ascuns par autres corporeles peines solom ceo qe piert apres par lus.

E coment qe lem pecche en fet ou en dit, en tuz jugementz sur personeles accions sont vij choses a peser en balaunce de seinte conscience, cest assavoir, la cause, la persone, le lu, le tens, la qualite, la quantite, e la fin. La cause, le quele ele soit mortele ou veniale; la persone del pleintiff e del defendaunt; le lu, le quel en seintuaire ou nient; le tens, le quel de jour ou de nuit; la qualite, le quel li trespas soit leger ou led; la quantite piert en sei; la fin, li quel prisee se fet en manere de destresce par avouable enparkment ou en manere de larcin par alienacion desavouable.

Ch. XIII. De Infams.

Touz ceux qi loialment sunt atteinz de pecchie dunt corporele peine sunt, sunt infames.[2] Infames sunt touz ceux qi pecchent mortelement ou felonessement; tuz ceux qi se perjurent en faus testmoignage; tuz faus juges; tuz usuriers; e tuz ceux qi sunt atteinz de personels trespas as queux overte penaunce est enjointe par droit jugement e pur ceo desuse dreit par fins e amerciemenz, par garant de pite. Estre ceo[3] sont infams ceus qi ceurent[4] tumbes e sarcus nutauntre ou mucetis pur maufere; ceus qi enservent franc homme contre son gree ou blemissent la

[1] *amies* 1642 and Houard.
[2] *enfuist* 1642 and Houard.
[3] *ces* MS.
[4] *feurent* 1642, *furètent* Houard.

false judgment, and of usurers attainted of usury after their deaths, but not if attainted while alive, for in that case they only lose their movables and may amend their sin by penance and repentance and have heirs); some by exile and abjuration of christendom, or of the realm, or of the vill or the fee and . . . . (as is the case of those attainted of personal trespass who have not wherewith to make satisfaction), some by banishment (as said above about those who are contumacious in venial personal actions and who hold no fee); some by other corporal punishments, as will appear incidentally hereafter.

And albeit one sins by deed or by word, in all judgments in personal actions seven things must be weighed in the balance of holy conscience, to wit, (1) the cause, (2) the person, (3) the place, (4) the time, (5) the quality, (6) the quantity, (7) the event.[1] (1) the cause—this may be mortal or venial; (2) the person of the plaintiff and of the defendant; (3) the place—whether in sanctuary or no; (4) the time—whether by day or by night; (5) the quality—whether the trespass be light or grave; (6) the quantity—this is self-evident; (7) the event—*e.g.* whether a taking was made by way of distress and lawful impounding, or by way of larceny and unlawful alienation.

Ch. XIII. Of the Infamous.

All who are lawfully attainted of a sin whence corporal punishment ensues are infamous. All who sin mortally or feloniously are infamous; all who perjure themselves by false testimony; all false judges; all usurers; and all who are attainted of those personal trespasses for which open penance is enjoined by right judgment but is forborne in favour of fines and amercements, the infliction of which instead of open penance is warranted by compassion. Also they are infamous who hunt after tombs and coffins by night or hidden things for evil purposes; also those who enslave a free man against his will or blemish the repute of

[1] Dig. xlviii. 19, 16; Bracton, f. 105.

fame de sa franchise par extorsion ou par ascun purchaz ; ceux aussi qi portent atteintes e ne poent mie prover le perjurie par unt loiaux jurours sunt esclaundre ; e ceux qi enditent ou appellent homme innocent de crim en blemissement de sa fame ou dautre personel trespas infamant a tort. Car ceus iij plees sunt tenables odious ; lem[1] par ceo qe seinte escripture ne sacorde mie a vengeaunce, eins retient deus vengeaunce de pecchez a li e comande merci. E ceo est countre apeax de felonie. Lautre datteindre perjurie est odious pur la peine corporele qe ensuit. Le tierz est odious pur ceo qe lei naturele le transverse e ne sei acorde a nul servage de homme ne dautre creature.

Dautrepart ceus qi combatent mortelement pur loier ; ceux qe sont vencus de combat joint par jugement entre ij homes ; ceux qi se retreent de batailles pus ceo qil aveient affermie de combatre si en eux soit la defaute ; ceux qe tienent bordel de femmes lorices ; ceus qe repernent lur femmes apres le pecchie de lur avoutire a lur escient ou la retiegne cum suspecte de cel pecche ; ceus qe font le pecchie de avouterie ; ceux qi espousent autres femmes vivantes les primers ; ceux qi allopent ou porgisent noneyn ; ceus qe pernent loier pur soffrer stupre ; celes qi gisent lur enfans a la mort ; ceux qi porgisent lur cosins e lur affins ; ceus qi espousent femme dedenz lan apres la mort lur femme avant ; celles qe se lessent marier dedenz lan apres la mort lur autre mari ; ceux e celes qe afferment mariages aillours vivanz lur femmes ou lur mariz ; e celes qi trop tost se purefient. E plusours autres infames e punisables par corporele peine en divers maners.

[1] Corr. *lun.*

his liberty by extortion or by purchasing [writs]; also those who bring attaints and cannot prove the perjury, and thus bring slander on lawful jurors; also those who wrongfully indict or appeal an innocent man to the blemishment of his repute for any crime or other infamous personal trespass. For these three pleas are accounted odious: the first because holy writ does not agree with vengeance, but God has retained for Himself vengeance for crimes and enjoins mercy—and this is against the appeal of felony; the second, namely, the attaint for perjury, is odious because of the corporal punishment to which it leads; the third is odious because the law of nature forbids it and will not accord with the serfage of man or of any other creature.

Also those are infamous who do mortal battle for hire; those who are vanquished in a battle adjudged between two men; those who withdraw from the battle after they have affirmed that they will fight, if the default be due to them; those who keep brothels of hired women; those who knowingly take back their wives when guilty of the sin of adultery; those who retain their wives whom they suspect of that sin; those who commit the sin of adultery; those who while their wives are alive espouse other women; those who elope with or corrupt a nun; those who take reward for suffering fornication; those who overlie their children to death; those who corrupt their relations by consanguinity or affinity; those who espouse a woman within a year after the deaths of their former wives; those who suffer themselves to be married within a year after the death of their former husbands; those who, being married, affirm that they have other wives or husbands; those women who purify themselves too soon:—these and divers others are infamous and punishable by corporal punishment in divers manners.

Ch. XIV. [*De Majestie.*]

Li mortiel pecchie de magestie ver le Roi celestre de sodomie se fornist *par* enfoir les peccheours tut vifs *par* fund en *tere* q*e* memoire sen esteigne, *pur* la *grant* abominacion del fet, cum cel pecche q*e* crie vengeaunce e q*e* plus est orrible q*e* de porgiser mere. Mes cel pecche ne satteint james devant juge *par* accusement, einz en est laudience defendue.

Li jugement de reneire se fornist *par* le feu cum *par* ardour en poudre.[1]

Li jugement del herege si est quadruple; lun est escom*en*ge, lautre deg*ra*dacion, li tierz desheriteson, e la quartre destre ars en cendre.

Les jugemenz de magestie ver le Roi de la *terre* se fornist *par* peines al ordenance e a la voluntie le Roi e *par* la mort. Les jugemenz de faussonerie e de *trai*sson se fornissent *par* tray*ner* e pendre a la mort.

Ch. XV. De Arson.

Le jugement darson se fornist *par* pendre a la mort, q*e* se soloit fornir *par* ardour; e en cas ou li fieu damaious sest *pris* *par* everesce de ascun custumablement yveroigne, soloit len get*er* tieux el fieu e ardoir *quant* len les trova freschement el fet.

Ch. XVI. De Jugement Domicide.

Li jugement domicide se fornist *com*monement *par* pendre jequis a la mort, en felonies nient notoires; e en notoires se fornist *par* *perte* des testes. E homicidez neqedent distinctez; car ascuns sunt homicides q*e* point ne pecchent ne peyne ne deservent, ascuns sunt homicides en significacion e ne mie en nouns, e ascuns de eus memes sont homicides. El *primer* cas sicom est de loiaux juges

[1] *ou pendre.* Houard.

Ch. XIV. Of Laesa Majestas.

The mortal sin of laesa majestas against the heavenly King, namely by sodomy, is punished by burying the sinners alive in the earth that their memory may be extinct, because of the great abomination of the deed, since this sin cries for vengeance and is more horrible than that of corrupting one's mother. But this sin is never attainted before a judge by accusation, for the hearing of it is forbidden.

The judgment of renegation is provided by fire and by burning to dust.

The judgment of heresy is quadruple: the first element is excommunication, the second degradation, the third disherison, and the fourth burning to cinders.

The judgment for laesa majestas against the earthly king is executed by torment according to the ordinance and will of the king and by death. The judgment of forgery and treason is that one be drawn and hanged.

Ch. XV. Of Arson.

The judgment for arson is that one be hanged to death; it used to be that one be burned; and in case the fire that did the damage was due to the drunkenness of an habitual drunkard, one used to throw him on the fire and burn him if one caught him freshly in the act.

Ch. XVI. Of the Judgment of Homicide.

The judgment of homicide is usually that one be hanged to death if the felony be not notorious; but if it be notorious, then that one lose one's head. But as to homicides we must distinguish; for some men are homicides who do not sin or deserve punishment, some are homicides in signification though not in name, and some are homicides of themselves. (1) The first case is that of lawful judges

qi *par* dreit jugement e *par* seine conscience occient, e les ministres assentanz e fornissanz les execucions de loiaux jugemenz de mort de hom*me* ; e sicom est de ceus qi occient saunz jugement e sanz pecchie, com est des homicides sanz descretioun, sicom est darragez, foxnastres, e enfans de meins de vij. ans de eage, e sicom est de ceux qi occient pur la pees meintenir e de ceux qi occient *par* lei, sicom est des homicides qi occient les mortels peccheours en lur pechez notoires de fet, e sicom est de ceux qi occient pur eus memes sauver qi autrement ne poent lur *pro*pre mort eschuire.

En lautre cas cum est de ceux qi sont en voluntie doccire e point noccient, sicom est de ceus qi gettent enfanz, veillz e malades en tieux lus ou il entendent qil moergent pur defaute de eide, e sicom ceux qi peinent hom*me* innocent e le font conoistre e gehir felonie e aver pecchie mortelement, ceux sont jugeables a la mort pur lintencion corrumpue, tut noccient il mie solom ceo qil quideroit. E sicom des homicides de voluntie qi appellent ou enditen*t* hom*me* innocent de crim mortel e ne proevent nient lur apeals ou lur ditz. E coment q*e* ceus soloient estre jugeables a la mort, le Roi Henry neq*e*dent li p*ri*mer iordena cele mitigacion, qil ne soient mes juges a la mort einz sunt jugeables a corporele peine. E de ceux qi atort appellent, distinctez ; car si ascun eit autre appelie si fausement qil neit tule [1] de son appel p*ar* enditement ne autre renable p*ro*eve, en tiel cas iert jugeable qil face satisfaccion a la p*ar*tie pleyntive e pus a peine corporele.

Des meinp*er*nours usa le Roi Knut a jug*er* les al foer des p*ri*ncipals q*ua*nt les p*ri*ncipaus ne parurent en jugement ; mes li roi Henri le p*ri*mer imist cele destincteison q*e* lordenaunce Knut se tenist en dreit des meinp*er*nours consentanz a la sute,[2] e les autres fuissent condempnables vers les pleintifs al foer des p*ri*ncipals sil fuissent p*re*senz, e de ver le Roi fussent punis p*ar* peine peccuniele.

[1] Corr. *title*. [2] Corr. *fuite* (?).

who kill by right judgment and holy conscience, and that of the ministers who assent to and execute lawful judgments of death; such is also the case of those who kill without a judgment, but still without sin, being homicides without discretion, *e.g.* madmen, born fools, and infants under seven years of age; and such is also the case of those who kill to maintain the peace or who kill by law, *e.g.* who kill mortal sinners in sins which are notorious in fact, or those who kill to save themselves and could not otherwise escape death.

(2) Our second case is that of those who have the will to kill but do not kill, *e.g.* those who abandon infants, old or sick folk in places where they intend them to die for want of help, and those who torture an innocent man and make him acknowledge and confess felony and mortal sin; and these are to be adjudged to death for their corrupt intention, albeit they did not kill according to their purpose. Such is the case also of those who are homicides in will, who appeal or indict an innocent man of a mortal crime and do not prove their appeals or their assertions; and such were formerly adjudged to death, but King Henry I. ordained this mitigation, that they should be adjudged, not to death, but to corporal punishment. And as to those who make wrongful appeals, let us distinguish; for if a man has appealed another so falsely that he has no title for his appeal in any indictment or other reasonable proof, in such a case he shall be awarded to make satisfaction to the party grieved and also to suffer corporal punishment.

As to mainpernors, King Knut used to judge them as though they were principals when the principals did not appear in court; but King Henry I. made this distinction, that Knut's ordinance should hold good if the mainpernors were consenting to the flight, but if not, then they were to be condemnable to make satisfaction to the plaintiff as their principals would have been condemnable had they been present, but as regards the king they should only be condemned to a pecuniary punishment.

El tierz cas com est de ceux qi se ardent, pendent, noient ou autrement se occient. Dautrepart fet a destiner[1] dautres homicides sicom de fisiciens, mirs,[2] justices, testmoins, de ceus qi ferent e neqedent mie occire, de fous[3] darragez e de futifs. Car fisiciens cirurgiens soient sages en lur facultez e facent loials cures provablement e eient seines les consciences, si qe rien neit failli al pacient qe a lur art appendi, si lur paciens moerent pur ceo ne sunt il mie homicides ne mahaimours ; mes cil enpreignent a fere cure qil ne sievent a bon chef mettre ou sil a bon chef sevent e sentremettent neqedent follement ou negligealment, issi qil y mettent froid pur chaud ou le revers ou trop pou de cure, ou ne mettent une due diligence, e nomeement en arsons e abscissions, qe sunt defendues a fere forqe al peril des mestres, si lur paciens moerent ou perdent menbre, en tel cas sunt il homicides ou mahainours. Juges jugent ascune foiz homme a la mort faussement a escient, e ascune foiz par ignoraunce. El primer cas sunt il homicides e pendables par jugement ; e ne soulement les juges, mes les fornissours, assessours, consentanz, e tieux qe nel destorberent cum fere le poieient.

El secund cas distinctez, car une manere dignoraunce est sicom de chose nient sue ne nestoit estre sue, e cele escuse ; autre est de chose nient sue, qe estoit estre sue tut ne seit lem point tenu del saver, e celi escuse aussi ; la tierce manere est qe vient de non savance de ceo qe len est tenu a savoir, e cele nescuse nient. E notez par ignoraunce en sei nest mie pecchie, mes la negligence de savoir est pecchie ; ne li juge ne pecche mie de ceo qe il ne siet la lei, einz pecche de sa folie emprise de juger folement ou fausement.

La quarte manere dignoraunce est de ceo qe len quide de chose autre qe droit, e si tiele ignoraunce viegne de fet se escuse ele, e si de droit a dunc nescuse ele mie. Ou issi,

[1] Corr. *distincter*. [2] *jurees* 1642.
[3] MS. repeats *de fous*.

(3) Our third case is that of those who burn, hang, drown, or otherwise kill themselves.

And then again we must make distinctions as to other homicides: thus physicians, leeches, justices, witnesses, those who strike but do not slay, fools, madmen, fugitives. Physicians and surgeons being learned in their faculties and provably making lawful cures, and having clear consciences, so that in nothing have they failed their patients that to their art belongs, if their patients die, are not homicides nor mayhemers; but if they undertake to make a cure which they do not know how to bring to a successful end, or, although they have such knowledge, they behave stupidly or negligently, as by applying heat instead of cold, or the reverse, or too little of the cure, or if they do not apply a due diligence, more especially in their cauterisings and amputations, which are things that cannot lawfully be done save at the peril of the practitioners, then, if their patients die or lose a limb, they are homicides or mayhemers. As to judges who falsely adjudge a man to death, sometimes they do this knowingly, sometimes in ignorance. In the first case they are homicides and should be adjudged to be hanged; and not they only, but those also who execute their judgments, sit with them, or consent to their doings, and also those who do not interfere with them when able so to do.

In the other case we must distinguish, for one kind of ignorance is that of a thing that is unknown and not to be known, and this is an excuse; another is ignorance of a thing that is unknown but which is to be known though one is not bound to know it, and this also is an excuse; but the third is ignorance of that which one is bound to know, and this is no excuse. And note that ignorance in itself is no sin, but neglect to know is a sin; and the judge does not sin by not knowing the law, but he does sin if of his folly he undertakes to judge and does so foolishly or falsely.

And there is a fourth kind of ignorance which consists in thinking otherwise than is right of some matter, and if this be ignorance of fact it excuses, but if it be ignorance

une manere dignoraunce est qe lem poet veincre, e cele ne escuse nient ; une autre est qe lem ne poet nient veincre, e cele escuse, le quel qe ele viegne de nature sicom par trop de eage, ou de maladie sicom de rage. E ceo qest dit dendroit des juges est entendable des jurours tesmoins en cas notoires.

Ou plusours sentremedlent felonessement e ascun ensoit occis e nul nel quident occire, en cas aussi ou enfant est occis par trop batre, e en cas ou plusours unt nauffri homme qi de une soule plaie morust, sunt trestuz grossement jugeables pur homicides pur laperte evidence del fet, car les volentez des ferours qi point ne voillent occire ne poeit nul juger for deu soul, ne pur quant pur ceo qe ascuns sembatent en teles medlees por destorber mal e en bone entencion. Ascuns y comandent aler qe poet estre pur bien e poet estre pur mal ; ascuns tenent, autres fierent ; ascuns donnent entre a meffesours, ascuns gueitent qe nul ne surveigne ; si tiex cas ne soient notoires se tiegne lur aquitance ou lur condempnacion en la descrecion des jurours. E aussi en cas quant genz occient defendant eux e lur dreit, cum eschiet en disseisines. Dautre part si homme tret a autre de quarel darc ou de sete, e len plaie aussi com mortelement, sil engarrit, tut fut sa voluntie de occire, pur ceo nest il mie jugeable pur homicide quant a homme, qe ne poet juger for qe solom les fez e ne mie solom les pensees.

Des fous ausi distinctez, car touz fous sunt contables pur homicides quant al jugement forpris les foux nastres e enfanz de meinis de vij ans de eage, car crim ne se poet fere ne pecche si noun parmi voluntie corumpue, e corrupcion de volunte ne poet issi si de discrecion noun e innocente de conscins sauve fous ragie.[1] E pur ceo ordena Robert Walraund qe fous nastres heirs soient en la garde le Roi pur

[1] MS. has a full stop after *noun*.

of law it is no excuse. Or put it thus: there is an ignorance that is superable, and that is no excuse; and there is an ignorance that is insuperable, and that is an excuse, whether it arises from nature, as from excessive age, or from a malady, such as madness. And what has been said of judges is to be understood also of jurors who testify in notorious cases.

Where divers persons are engaged in a felonious medley and one of them is killed, but no one thought to kill him; and again, where a child is killed by too much beating; and again, where divers persons have wounded a man and he dies of one wound—in these cases all of them in mass are to be adjudged homicides upon the open evidence of the fact, for the will of the strikers who did not wish to kill no one can judge save God only, albeit that some took part in the medley for the prevention of evil and with good intentions. Some command others to go, and this may be for good or for ill; some hold down while others strike; some let the evil-doers into the house while others are keeping watch to prevent their being interrupted: if such cases as these be not notorious, then acquittal and condemnation must be left to the discretion of the jurors. So also when men kill who are defending themselves or their right, as is apt to happen in disseisins. On the other hand, if a man shoots at another with a bolt from a bow or with an arrow and wounds him as it were mortally—if none the less the wounded man recovers, the wounder is not to be adjudged a homicide by human judgment, albeit his intent was to kill, for man can judge only of deeds and not of thoughts.

Then as to fools let us distinguish, for all fools can be adjudged homicides except natural fools and children within the age of seven years; for there can be no crime or sin without a corrupt will, and there can be no corruption of will where there is no discretion and an innocent conscience, save in the case of raging fools (?). And therefore Robert Walerand ordained that heirs who were born fools should be in ward to the king, to be married along with

marier ovesqe lur heritages de qi fieus qil tiegnent. Des arragez ensement fet a destincter, car les frenetics e les lunatics poent felonessement pecchir, e issi sunt il contables pur homicides ascuns foit e jugeable, mes ne mie les continuelement arragez.

Denfanz ensement distinctez, des enfantz homicides e des enfantz occis :—les homicides dedenz lage de xxj an ne sunt mie tantost jugeables a la mort en fez nient notoires de fet einz qe il soient de plener eage. Des enfaunz occis distinctez, li quel il soient occis es ventres des meres ou pus lur nativite ; el primer cas nest nul homicide jugeable pur ceo qe nul ne poet juger enfant avant ceo qil soit veu el secle le quel il soit monstrie ou non. E des enfanz occis el primer an de lur eage soit a la conoissaunce del eglise.

Des futifs e de eus deffendaunz est la destincteson cele, qe cist qe occist futif apres ceo qil sest rendu a la pees en fet nient notoire de fet, il iert jugeable a la mort cum homicide ; autrement nient. E cist qe occist homme soi defendaunt qe porroit foier e eschuire doccire est aussi jugeable a la mort ; e autrement nient.

Des crims de robberie, larcin e de homsocne ou le damage e laffrai passe xij d. sunt les peccheours pris en pecchiez occizables par la perte des testes si poeple soit present qe puisse le fet e la felonie tesmoiner. E es cas nient notoires est li jugement la mort par pendre.

Si li defendant soit femme, distinctez le quel ele out mari ou noun, e uncore en soit vestue, e del accion le quele ele soit mortele ou noun ; car si ele soit e fu soule e sanz baron qil eit espose al hus de mouster, e laccion soit mortele,

their inheritances, of whosesoever fees those inheritances might be held.[1] As to madmen we must distinguish, for those who are frantic or lunatic can sin feloniously, and thus may sometimes be accountable and adjudged as homicides; but not those who are continuously mad.

As to infants who are homicides and infants who are slain we must distinguish thus: homicides who are within the age of twenty-one years are not to be adjudged to death until they have attained full age, unless their crime be 'notorious in fact.' As to an infant who is slain we must distinguish whether he is slain *en ventre sa mère* or after birth, for in the former case there is no homicide, for no one can be adjudged an infant until he has been seen in the world so that it may be known whether he is a monster or no; and as to infants slain in their first year, this belongs to the cognisance of the church.

As to fugitives and those who defend themselves the distinction is this—that if one kill a fugitive after that he has surrendered to the peace and the fugitive's crime be not 'notorious in fact,' then one is to be adjudged to death as a homicide; otherwise not. And one who in self-defence slays a man, if he (the slayer) could have fled and avoided the killing, is to be adjudged to death; otherwise not.

As to the sins of robbery, larceny, and hamsoken, where the damage and the affray exceeds twelve pence, the sinners taken in their sins are to be killed by loss of their heads if there be people present who can testify to the fact and the felony. But in cases that are not notorious the judgment is death by hanging.

If the defendant is a woman, then we must distinguish whether she is married or no and whether she is still vested [with a husband], and as to the action whether it is mortal or no, for if she is, and was, an unmarried woman and without a husband whom she espoused at the church door and the action is mortal, she must answer by herself

[1] The introduction of the rule that all idiots are in ward to the king is ascribed to Robert Walerand, a favourite and a justice of Henry III. See Britton, i. 243, and *English Historical Review*, vi. 369.

respoigne soule al foer de homme; e si ele seit coverte de mari, distinctez, car si ele seit encopee de mortel crim principalment, respoigne, e si del accessoire, distinctez, car si ele soit encoupee del consentement a la felonie son mari, ou dautre sachaunt soun mari, uncore distinctez del crim, car es crims de larcin, de homsokne e de tote autres meindres pecchez purra ele respondre qele est souz la verge son mari e qe ele ne poet contredire: tel respons est peremptoire en larcin. E si nient sachant son mari, respoigne. E de femme sanz mari encopee de la cumpagnie de larron cum de mie nuit ou de poi de tens porra ele dire qele nestoit en sa cumpagnie mes cum puteine louice.[1]

De mortiels jugemenz, de utlagarie, de abjuracion del reaume, des vencuz de bataille pur felonie mortele, e dautrement atteinz de pecche mortiel notoire ou nient notoire, est tiel effect qe par la corrupcion del cep qi est enmorti par la felonie mortele des peccheours est le dreit del sanc esteint e de la descente de chescun dreit el sanc, si qe rien ne porra descendre de eus a nul de lur heirs proscheins ne remuez par descente ne par nul resort, einz en remeinent eschaetes as seignurages des fieus, del tens qe les pecchiez se firent, qi qe unques ensoient tenaunz, par quel qe contractz el moien tens e totes feuties, contractz, e obligacions se delient, e funt solom ceo qe dit est de utlaguez, e les bens moebles remeignaunz outre autri dreit remeignent forfet au Roi; e le Roi en le remembraunce de lur felonies e despit des felons fere estrepper totes lur mansions, lur gardins arracer, lur bois couper e gaster, e lur prez arrer ou autrement reverser; qe li roi Henri le premer modefia a la requeste del comun en ceste manere qe pur sauver les fieus de villein gast prendrent les rois les fieus de felons mortieux en lur mein de qi fieu qil fussent, e les tendrent

[1] *louee* (1642 and Houard).

like a man; and if she is coverte of a husband, then we distinguish, for if she is accused of mortal crime as a principal she must answer, and if as an accessory then we must distinguish, for if she is accused of consenting to the felony of her husband or to that of another with her husband's knowledge, then once more we must distinguish, for to the crime of larceny or of hamsoken and all other lesser sins she may answer that she is under her husband's rod and that she may not contradict him, and in larceny this answer is peremptory; but if what she did was done without her husband's knowledge, then she must answer. And an unmarried woman accused of being in the company of a thief at midnight or for a little while may plead that she was only in his company as a hired prostitute.

The effect of a judgment of death, of outlawry, of abjuration of the realm, of those who are vanquished in battle for a mortal felony or otherwise attainted of a mortal sin, whether notorious or not notorious, is that by the corruption of the stock, which is mortified by the mortal felony of the sinners, the right of blood is extinguished and the descent of every right in the blood, so that nothing can descend from them to any of their heirs, near or remote, either by descent or by resort, but such rights remain escheated to the lords of the fees from the time when the sins were committed, whoever may have become tenants, so that contracts made in the meantime and all fealties, contracts, and obligations are undone; and they are treated in the manner set forth above in connexion with outlawry; and such movable goods as remain, when those that were held in right of another are subtracted, are forfeited to the king; and the king in remembrance of their felonies and in despite of the felons shall cause their houses to be pulled down, their gardens to be rooted up, their woods to be cut down and wasted, their meadows to be ploughed or otherwise destroyed; but King Henry I. modified this at the request of the community, so that, to save the fees from villainous waste, the kings took into their hands the fees of mortal felons, of whosesoever fee they might be,

e emprendroient les profiz par un an pur tiel estrep si len en feist autre gre.

Le crim de rap se fornist ore pur pendre a la mort sanz aver regard li quel la femme ravie seit pucelle ou noun ou sanz destincter de quele condicion ele seit, ou le quel a sute personele ou a la sieute le Roi, li qel crim avant le tens le Roi Edward le secund se fornist par crevure de euz e la perte des coilz pur lappetit qe entra par mi les eulz, e la chalor de stupre vegnaunt es reins del leccheour.

Set choses destorbent mortieux jugemenz: lune faus jugement ou fol jugement, lautre faus testmoinage, la tierce defaute de meillour respons, la quartre la hastivesce le Roi, la quinte de feme ceinte denfaunt. Les primers iij cas prenent respit par xl jurs, le quarte par trente jours, e la quinte par xl simenes ou plus [1] lenfaunt ne seit einz ces [2] vie.[3] La sisime est defaute de discrecion sicom est de foux nastres, des arragez e denfanz e de trop liens ou de eles esperet.

La setime est povertie; en quel cas distinctez, ou de la povertie del peccheour, ou de la chose. Car li poure qe defuie famitie prent vitaille pur sa vie sustenir, ou garnement qil ne moere pur froit si par tant se sauve de la mort nest mie pur taunt jugeable a la mort sil ne soit de poer del aver achatie ou empromptie, desicom teus en sunt garantiz par lei naturele. E tut seit qe lei neit regard forqe as quer des peccheour, le Roi Edward neqedent limita la quantite de robberie e de larcin en ceste manere, cest assaver qe nul ne ust jugement de la mort si soun larcin, son hampsocne ou sa robberie ne passast xij d. desterlings.

E notez qe li Roi Henri le primer par Ranulf de Glanvil ordena en totes mortels accions qe par la ou laccion fust

[1] Supply *si*. [2] Corr. *ceo*. [3] Perhaps *nie*.

and held them and took the profits thereof for a year, if [the lords] made agreement with him that he should have this instead of wasting the land.

The punishment for the crime of rape is nowadays death by hanging, and this whether the ravished woman were a maid or no, and without regard to her rank, and whether the conviction be at her personal suit or at the king's suit; and until the time of King Edward II. this crime was punished by tearing out of eyes and loss of testicles, because of the appetite which entered through the eyes and the heat of fornication which came into the reins of the lechers.[1]

There are seven causes which disturb a mortal judgment:[2]—(1) a false or foolish judgment; (2) false testimony; (3) default of a better answer; (4) the hastiness of the king; (5) in the case of a woman, pregnancy—the first three causes give respite for forty days, the fourth for thirty days, the fifth for forty weeks, or more if the child be not then born; (6) want of discretion, as in the case of born fools, madmen, infants, and ;[3] (7) poverty.

In the case of poverty we must distinguish poverty of the sinner and poverty of the thing in question. For the poor man who to escape starvation takes victuals to sustain his life, or a garment to prevent death by cold, if thereby he saves himself from death, is not to be adjudged to death, if he had no power to buy or borrow, for such doings are warranted by the law natural. And albeit the law only has regard to the sinner's heart, nevertheless King Edward set a limit to the amount of robbery or larceny [that would serve to hang a man] in this manner, to wit, that no one should be adjudged to death if his larceny, hamsoken, or robbery did not exceed twelve pence sterling.

And note that King Henry I.[4] by Randolph Glanvill ordained that in all mortal actions if the action was met

[1] By Edward II. our author means the king whom we call Edward I.; he refers to Stat. West. II. c. 34.

[2] These are causes for arrest of judgment.

[3] The last words of this sentence have not been translated.

[4] Either this should be Henry II., or our author has forgotten Glanvill's date.

encontre de excepcion affirmative q*e* cele affirmacion fust p*ri*merement recevable a prover, en favour de sauvacion. E de ceo soloit estre q*e* si hom*m*e surmeist autre felonie e il deit al actour qil menti, q*e* la p*ro*eve fust agarde al defendant del affirmacion de la menceonge, cestasavoir p*ar* son cors ou autrement. E aussi si li defendaunt deist q*e* a tel fet ne poet il estre al jour, lu e lan nomee en la pleinte, e p*ar* la reeson qil estoit aillurs en lu ou p*re*sumpcion ne se poeit fire qil poeit aver este a tiel fet, ou sil deit q*e* il li avint par ascun loial title, pur sauvacion apendi la p*ro*eve al defendant sur p*er*il p*er*emptoire de laccion e del excepcion. Mes si li defendant vie ou dedie simplement laccion, en tieux cas appent la p*ro*eve al actour.

Des utlagez, veive,[1] es exiillz, baniz e de ceux qi unt forjure le reaume retornez avant avouable t*er*me, pris e detenuz, se fornist li jugement p*ar* pendre a la mort.

Ch. XVII. De Peines en divers manere.

Passie des peines corp*or*eles morteles fet a descendre as corporel veniales, q*e* se funt p*ar* ov*er*tes penaunces infamatoires. E p*ri*mes des peines taillons, q*e* se funt en treis cas, cest assaver en mahain, plaie e enp*ri*sonement, en queux si les plez soient attamez p*ar* appeals de felonie pur vengeaunce soulement, adunc appendent jugemenz talions, sicom mahain pur mahain, plaie pur plaie, e enp*ri*sonment[2] pur enprisonement. E si venialement en forme de trespas, adunc tienent lu tieux jugemenz q*e* les peccheours facent renable satisfaccion as pleintifs, e pus sont agardables a fere overte penaunce as q*ua*ntites des trespas. Overtes penaunces sunt cestes, amendemenz de chemins, de chaungees,[3] e des poinz, elevacion al pillorie, al tumbrel,

[1] Corr. *weives.* [2] MS. repeats *e enprisonment.* [3] Corr. *chaucces.*

by an affirmative exception, this affirmative should be first received in proof, and this in favour of the salvation of defendants. And formerly if one man surmised felony against another and that other replied to the action by giving the lie, then the proof of this affirmation, namely, the 'You lie,' was awarded to the defendant and was to be given by his body or otherwise. And so too if the defendant said that he could not have been present at the crime at the time and place alleged, for that he was in some other place, such that the presumption was that he could not have been at the deed, or if he said that he came to the thing in dispute by some lawful title, then in favour of salvation the proof was awarded to the defendant, but under a peremptory peril of being defeated both in the exception and the action. But if the defendant simply traverses or denies the action, then in this case the proof is with the plaintiff.

The judgment of death by hanging is provided for outlaws, and waifs, and for persons who have been banished or exiled or have abjured the realm, if they return before the lawful term and are taken and detained.

Ch. XVII. Of various Kinds of Punishment.

Having treated of mortal corporal punishments, we must descend to venial corporal punishments, which take the form of public and infamatory penances. And first we speak of retaliatory punishments, and these are awarded in three cases, to wit, mayhem, wounding, and imprisonment, in which cases if the pleas be commenced by way of appeals of felony for vengeance only, then retaliatory judgments are to be given, thus, mayhem for mayhem, wound for wound, imprisonment for imprisonment; but if the pleas be commenced venially in the form of trespass, then the judgment is that the sinners do make reasonable satisfaction to the plaintiffs, and further an overt penance according to the quantity of the trespass is to be awarded them. Overt penances are these: [compulsion to] the repair of highways, footways, or bridges, being put in the pillory or the tumbrel,

emprisonement par jugement, abjuracion del reaume, exil, bannissement de lu, ou de ville, ou de terre, ou de fieus, de entrer en lu ou de issir de lu par jugement e ranceon de tele peine par peine peccuniele, ou par autre fin, e tieles autres maners de jugemenz penales.

E si les peccheours soient enfaunz ou autrement en garde, en tieux cas sunt les gardeins jugeables a la satisfaccion des damages, e les gardeins se preignent as biens des trespassours, mes la penaunce overte est suspendable taunt cum il sont en garde. E solom les differences des pecchiez e des peccheours varient les peines en manere qe suit. E primes de faus juges qi pecchiez poissent plus pur tant qil sunt en plus haut degre dautres genz.

Ch. XVIII. De Faus Justices.

De faus juges assignez ordena le Roi Alfred tiel jugement qe pur le despit qil funt a Dieu qi vicaires il se funt e al Roi qi tant les honure qil les met en si noble siccom est la chaire Dieu, e lur donne si grant[1] dignetie de representin la persone Dieu e la sine pur juger les peccheours, en primes sunt agardables a fere satisfaccion as blessiez, e le remenant de lur biens sont remanables forfez au Roi, sauve autriz droiz e dettes, e totes lur possessions forfetes, ovesqes totes lur possessions par eus purchacees, en qi meins qe eles seient devenus, e pus sunt trebuchables al foer del faus Lucifer si bas qe jammes ne relevent, e des cors sunt penables ou exillables a la voluntie le Roi; e de mortel jugement faus sunt il pendables al foer dautres homicides, e pur mahaim mahaim, pur plaie plaie, e pur enprisonement enprisonment, tieus pur tieus, en meme le lu, e en meme lestat.

Li jugement de faus juges ordenaires nest mie en venials jugemenz si chargeant cum est des juges delegat

[1] MS. repeats *si grant*.

imprisonment under judgment, abjuration of the realm, exile, banishment from the place, or the vill, or the land, or the fee, to enter such a place or to leave it under judgment, and ransom of such punishments by a pecuniary punishment or some other fine—and other such sorts of penal judgments. And if the sinners are infants or otherwise in ward, their guardians are adjudged to pay the damages and may betake themselves to the goods of the trespassers, but the overt penance is suspended so long as the sinner is in ward. And punishments vary according to distinctions between sins and between sinners in manner following. And first of false judges whose sins are heavier than those of others, since they are of higher rank than others.

Ch. XVIII. Of False Justices.

As to false justices delegate, King Alfred ordained this judgment, that (for the despite which they do to God, whose vicars they make themselves, and to the king, who has honoured them by placing them in a noble seat, namely in the chair of God, and has given them the great dignity of representing the person of God and of the king for the punishment of sinners), they should first be adjudged to make satisfaction to the injured, and that the remnant of their goods should be forfeited to the king, with a saving for the rights and debts of others, and that all their possessions should be forfeited, and all the possessions purchased by them, into whosesoever hands they shall have come, and that then they should be cast down, after the likeness of the false Lucifer, so low that they should never rise again, and that their bodies should be punishable and exileable at the king's will; and that for a false mortal judgment they should be hanged like other homicides, and mayhem for mayhem, wound for wound, imprisonment for imprisonment, and like for like in all particulars of place and condition.

The judgment of false judges ordinary in the case of venial judgments is not so heavy as that of judges delegate,

avantdit, einz enprimes sunt condempnables a la satisfaccion des pleintifs, e de ver le Roi sunt punissables par peine peccuniele e foriugeables de chescun juresdiccion, e des cas mortieux e tallions solom ceo qe dit est dautres juges.

Ch. XIX. De Perjurie.

De[1] perjurie est grant pecchie distinctez ou de perjurie de faus testmoinage, ou de perjurie cum fei mentir contre le serement de feautie. Del primer perjurie fet a destincter ou de perjurie mortel ou de venial. Si de mortel adunc siut mortel jugement al foer daperz homicides. E notez qe en totes personels accions atteintes[2] torcenouses a personeles siutes appent tiel agard qe due satisfaccion ne[3] face as pleintifs, e les peccheors soient puniz par corporele peine, les qeles peines sunt achatees par ranceons de deners. E si de venial perjurie adunc soloient les condempnables a exil a anees ou a jammes, e lur bois, prez, mansions e gardins atirables al foer des homicides, sauve qe lur heirs ne remeissent desheritez.

De lautre perjurie, distinctez ou cum fei mentir au Roi ou a autre. E si au Roi distinctez ou cum son tenaunt ou noun. E si de serement de feautie issant de fieu e la feautie soit blemie en ascuns de ses poinz, a dunc tient lu le proces avant dit es defautes. E si de serement nient issaunt de fieu distinctez ou de commune feautie juree au Roi pur la demoere en son fieu, e adunqe tient lu simple peine corporele qe passe la peine qe serreit jugeable a autres nient ministres solom la voluntie le Roi.[4]

[1] Omit *De.* [2] Corr. *attames* (?). [3] Corr. *se.*
[4] A loss of words from the preceding sentence may be suspected.

which has been stated above, but in the first place they are to be condemned to satisfy the plaintiffs, and then to be punished in relation to the king by pecuniary penalties, and they are to be forjudged of every jurisdiction; but in mortal cases, and those which demand retaliation, they are to be punished like other judges in manner aforesaid.

Ch. XIX. Of Perjury.

As to the great sin of perjury, we distinguish between perjury by false testimony and perjury by belying the faith of one's oath of fealty. In the former case we distinguish mortal from venial perjury. In the case of mortal perjury there is mortal judgment, as in the case of open homicide. And note that in all personal actions [entered as tortious] at the suit of the party, the judgment is that due satisfaction be made to the plaintiff, and that the sinners be punished by a corporal punishment, which can be redeemed by a ransom in money. And for venial perjury those convicted may be condemned to exile for years or for ever, and their woods, meadows, houses, and gardens may be destroyed as though they were homicides, but their heirs will not be disinherited.

As to the other sort of perjury, we distinguish between faith belied to the king and faith belied to another. And in the king's case we distinguish whether the swearer was his tenant or no. If the oath of fealty was issuing from the fee, and the fealty is blemished in any point, then the procedure is that described in our chapter on defaults. If the fealty does not issue from the fee, then we must distinguish the common fealty sworn to the king by those who dwell within his fee, in which case there is a simple corporal punishment, which exceeds at the king's will the punishment which would be awarded to others who are not the king's ministers.

Ch. XX. De Office des Justices en Eire.

Presentemenz des pecchiez se funt par loffice de corouners, par viscontes e baillifs en tourns e veuues, par enquerours e justices especiaux, e par loffice des Rois, ou de lur chief justices, ou de lur justices generales. E pur ceo qe les uns nunt poer a terminer les pecchez de tieux presentemenz ne de punir les trespassours, e les autres qe point[1] ne voellent, ou ne funt mie duement ceo qe droit douroit,[2] ou punissent les innocens e esparnient as coupables, estoit auncienement ordene qe les Rois par eus ou par lur chief justices ou par justices generals a tuz plez oir e terminer, errasent de vij. aunz en vij. ans par mie tuz countiez, pur receivre les roulles de totes justices assignez, de corouners, denquerours, de eschatcours, de viscountes, de hundreders, de bailifs, e de touz seneschaus de trestuz lur jugements, enquestes, presentment e touz lur offices, e de ceux roulles diligealment examiner, si ascun eust erre taunt ne quant en la lei, ou quant al damage del Roi, ou en grevaunce del poeple ; e ceo qil trovassent nient termine terminassent en eire, redresseassent eles ministres e les negligenz punirent solom les riules de droit, e puis enquessent de touz pecchiez qe a la juresdiccion e la sute des Rois appendissent. E notez qe tut eient les Rois sute entor[3] mortieus pecchiez, e es torz fez au lei e al droit de la coroune, pur ceo ne fet mie a entendre qil eit sute en touz pecchiez. Mes si ascun soit pleintif ne sue mie sa pleinte apres ceo qele averad este afferme, distinctez, car si de pecchie personel venial, suffit por les defendaunz, car la noun sieute des pleintifs suppose satisfaccion des blesciez ; e si de pecche mortiel, uncore niad le Roi nule siute si noun par garaunt dappel ou denditement, en queux bosoigne as appellez e enditent[4] qil se hastent a due aquitaunce, ne lur est nul tenu a respondre de nule meindre[5] accion pur lexcepcion de la mortiele infamie qe les forbarre.

[1] Corr. *poient.*
[2] *de droit ils puissent*, 1642 and Houard.
[3] *en tous* or *envers.*
[4] Corr. *enditees*, 1642 and Houard.
[5] *maniere*, 1642 and Houard.

Ch. XX. Of the Office of Justices in Eyre.

Presentments of sins are made *ex officio* to the coroners, sheriffs, and bailiffs at turns and views [of frankpledge], to inquisitors and special justices, and *ex officio* to the kings or their chief justices or general justices. And because some have no power to 'determine' the sins thus presented, or to punish the trespassers, and others who can do it will not, or will not duly do what law requires, or punish the innocent and spare the guilty, it was ordained of old that the kings in person, or by their chief justices, or their general justices appointed to hear and determine all pleas, should journey every seven years throughout all counties to receive the rolls of all justices delegate, coroners, inquisitors, escheators, sheriffs, hundredors, and bailiffs, and of all stewards, containing all their judgments, inquests, presentments, and official doings, and should diligently examine these rolls, to see whether any one had erred in any point in the law, or to the damage of the king, or to the grievance of his people; and what they found undetermined they were to determine in their eyre, and should redress the deeds of officials, and punish neglects according to the rules of right, and afterwards inquire of all sins which are within the king's jurisdiction and prosecution. And note that though the king has suit [of] mortal sins and of wrongs done to the law or to the right of the crown, still it is not to be understood that he can make suit for all sins. But if any plaintiff will not pursue his plaint after that he has affirmed it, then we must distinguish, for if it be for a venial personal sin, that is enough for the defendants, for non-suit supposes a satisfaction of the harm done; and even if it be for a mortal sin, still the king cannot sue unless he has warrant for this in an appeal or an indictment, in which case it behoves the appellees or indictees to be quick to get an acquittal, for until then no one will be obliged to answer them in any lower action, because the exception of mortal infamy will bar them.

Ch. XXI. Des Articles en Eire.

Chescun pais solloit estre garni al meins par xl. jours *par* gen*er*ale somonses des venues des Rois ; ou apres les essoignes aiornees, e les assizes de vitaille ordenez, e les bans des ordenan*c*ez criez, e ceux des f*r*anchises aiornees, e les jurours t*r*iez, jurez, e chargiez de lur articles, e les cliens de franchises e les roulles des justices, des corouners, de touz seneschaux e dautres e tote manere des pleez e de p*r*esentemenz pus la dereine eire priz e receux, soleit len enprimes enquere, oir, e t*er*min*er* les articles presentez en la derreine eire attamez e nient terminez ; e pus oir e t*er*miner brefs e pleintes, deliv*er*er p*r*isons, examiner roullez e redrescer errours e tuz torz p*ar* loials jugemenz saunz regard de nuli p*er*sone. E tuz ceux juges ordenaires e assignes, viscountes, baillifs, e seneschaux des seignurs de fieus, e touz autres q*e* clamerent jurediccion q*e* lem poet attendre dascun tort fet countre les seintes riules de droit dempna len p*ar* jugement de torcenous juges ove le regard a lei distincteison des greez. Corouners, eschateours, viscountes, baillifs, e autres ministres fesaunz torz al Roi ou al poeple soloit len punir al foer dautres e outre solom la voluntie le Roi. Les peccheours q*e* len trova usaunz fausses balaunces e faus detz [1] e gainaunz par assise enfreinte de pain, vin, c*er*voise, dras e de autres marchaundises soloit len lever al pillorie, e les femes a tumeril, e mes nestoient sufferz de marchaundir, e ia ne se poient courir p*ar* usage ou f*r*anchise de ville ou de lu, par quoi lusage fust con-t*r*aiaunt a dreit. Les cillours de bourses soloit lem prendre en lur pecchiez notoires de fet, e pur la coupeure de bourses e dautres biens vaillaunz meins de xij. deners e plus de vj. d.

[1] *metes*, 1642 and Houard.

Ch. XXI. The Articles of the Eyre.

Every county was warned at least forty days in advance of the king's coming by a general summons; and then after the essoins were adjourned, and the assizes of victual were ordained, and the bans of ordinances were proclaimed, and days were given to the men of the franchises, and the jurors were challenged, sworn and charged with their articles, and the claims of franchises, and the rolls of the justices and the coroners and the stewards, and others, and of all manner of pleas and presentments since the last eyre, were taken and received—after all this, then the first business was to inquire of, hear, and determine the matters which were presented in the last eyre, and which were then commenced but not finished; and the next was to hear and determine the plaints and writs, to deliver the prisoners, examine the rolls, and redress errors and all injuries, by lawful judgment without respect of persons. And all these judges ordinary or assigned, sheriffs, bailiffs, stewards of the lords of fees, and all others who claimed jurisdiction could be attainted of any tort done against the holy rules of right, and were condemned by the judgment provided for tortious judges, with due respect to their degrees. Coroners, escheators, sheriffs, bailiffs, and other officers guilty of wrongs against the king and the people were punished like other men, and in addition they were punished at the king's will. The sinners who were found using false scales and false weights, and making gain by breach of the assize of bread, wine, ale, cloth, and other merchandise, were sent, if males to the pillory, if women to the tumbrel, and were forbidden further merchandise, and were not allowed to excuse themselves by the usage or franchise of any town or place, for such a usage would be contrary to law. Cutpurses were seized in their crimes 'notorious in fact,' and for cutting a purse, or taking other goods to the value of less than twelve, but more than six, pence, one

soloit len fere freschement saunz mener les en prison ou aillours devant juge assigne couper lune oreille, e de banir les de la ville ou del fieu a lautre foit. E pur lour larcin meins vaillaunt de vj. d. soloient tieux estre levez al pillorie al primer foiz e destre baniz a lautre.

En jugemenz des personels trespas venials soloit Martin de Pateshull user quant a taxacion des damages mises en pleintes cest cours; il soloit enquere doffice des jurors par queux ascun principal trespassour fut atteint devant li, des nons de trestuz ceus qi coupables estoient el principal degrie e en laccessoire, e einz ces [1] qil alast al jugement des damages solom le noumbre des enditez, issi qe nul pleintif ne recoverast plusours entiers damages par pluralite des pleintifs [2] de un soul trespas vers les trespassours severalment.

Ch. XXII. Des Fraunchises.

Des fraunchises notez qe pur ceo qe le Roi ne use forqe al foier denfant dendreit les e les dignetiez de sa coroune, nest nule feffement de loiale fraunchise si estable qe les Rois ne les poent rapelir par dreit proces, par si qil en facent satisfaccion a la valante cum pur la garauntie. E ben list a chescun qi sensent greive a fere la siute pur le Roi pur fere anentir chescun fraunchise forfete par contumace, cum si baillif de fraunchise ne face execucion del retorn de viscounte del comandement le Roi, par abusion cum par desus de la fraunchise sicom trop largement ou nient duement; car par le bref suaunt qe li viceconte entre en la fraunchise, recovere le Roi sa seisine e issi devent jug [3] gueldable ceo qe avant fu enfraunchi. E tuz ceux soloient forfere la fraunchise de garde de gaole aver en feu qe par title de fraunchise de infangenetheof ou de retorn des briefs, nenvoierent sanz delai les prisons pris en lus

[1] Corr. *cco.* [2] Corr. *pleintes.* [3] Corr. *juge.*

used, on the spot, without taking them to prison or elsewhere before a judge delegate, to cut an ear off for a first offence, and to banish them from the vill or from the fee for a second offence; and if the larceny was to a less amount than sixpence, they were put in the pillory for the first and banished for the second offence.

As regards the taxation of the damages that were laid in venial personal actions, Martin of Pateshull used to proceed thus: he inquired *ex officio* from the jurors by whom any of the principal trespassers had been attainted before him, concerning the names of all who were guilty as principals or as accessories, and then he proceeded to give judgment for the damages according to the number of the persons thus indicted, so that no plaintiff should recover his whole damages more than once for one trespass committed by several trespassers by means of a plurality of [plaints].

Ch. XXII. Of Franchises.

As to franchises, note that as the king in his enjoyment of the [rights] and dignities of his crown is comparable to an infant (*fungitur vice minoris*), no feoffment of a lawful franchise is so stable that kings cannot repeal it by right process on making recompense for its value as in the case of a warranty. And everyone who thinks himself grieved can make suit for the king to annul a franchise forfeited by contumacy (as if a bailiff of a franchise does not execute the king's command which the sheriff has handed to him for his return), or by abuse or disuse of the franchise, as if its limits are exceeded or it is not duly observed; for by the writ which follows on such a procedure, and which bids the sheriff enter the franchise, the king recovers his seisin, and so that which before was enfranchised becomes geldable. And all those forfeit the franchise of keeping a gaol in fee by reason of the franchise of infangthief or of return of writs, who will not send to the gaol of the geldable all those who have been arrested in

fraunchis pur felonie fete el gueldable jesqes a la gaole del gueldable, si qe le Roi ne perdra les pelfres ne les chatieux des felouns ne autres proffiz e droiz ; car le Roi ne donne nule fraunchise en prejudice de li ne de nul autre, nomeement de retorn de bref ne garde de gaole avoir. Example poeit estre, sicom par entre ij. veisins enfraunchis, qe sicom lun ne poet nul prison retenir en prejudice del autre, aussi ne poet nul homme enfraunchi retenir prison en prejudice del Roi, e sil le face il forfet la fraunchise. E aussi appent qe jurours veignent hors des fraunchises requis [1] par devaunt le Roi e ces commissaires requis [1] el gueldable e aillours a soun mandement, aussi ben sur criminals accions qe sur reales. E si ascun recette felon en sa fraunchise a escient cist en est chalengeable.

Ch. XXIII. De Satisfaccion de Dette.

Des damages recoverez vers autre .j. ou plusours iert jugement rendable countre lactour ; sicom en cest cas, si plusours deivent une dette dunt chescun seit tenu el tut, si lun de eus en face gre, tut ne face il gre especialment pur touz les dettours trestûz, neqedent en sunt quites pur ceo qe satisfaccion regarde la dette ne mie les persones.

Ch. XXIV. Cas de Deseisine.[2]

Si les jurours en petites assises soient de un assent, die un le comun verdit pur touz. E sil dient qil nen savent nient, lactour ne recovre nient pur ceo qil ne proeve mie sa accion. E sil seient de divers assenz, pur ceo ne sont il mie manasables ne enprisonables, einz sunt tretables e severables e examinables diligealment ; e si ij jurours soient trovez accordaunz entre trestuz les autres, suffit pur celi

[1] Corr. *jeques*. [2] The letters *cis* are obliterated in MS.

their franchise for felonies committed in the geldable, so that the king may not lose the pelf [stolen goods] nor the chattels of the felons, nor other profits and rights; for the king gives no franchise to the prejudice of himself or of another, more especially the return of writs and the custody of gaols. To take an example: just as if two neighbours enjoy franchises, one cannot retain a prisoner to the prejudice of the other, so no man with a franchise can retain a prisoner to the prejudice of the king, and if he does it he forfeits his franchise. And it behoves also that jurors must come from the franchises before the king and his commissioners into the geldable and elsewhere at his command, as well in criminal as in real actions. And if anyone knowingly receives a felon into his franchise, it is challengeable on that account.

Ch. XXIII. Of the Satisfaction of Debts.

If damages be recovered against one or more, judgment [in a subsequent action] must be given against the plaintiff; in this case, for example, namely, if divers persons owe a debt in such wise that each of them is bound for the whole, then if one of them makes accord with the plaintiff, albeit he does not expressly make the accord on behalf of all the debtors, nevertheless all of them are quit, for satisfaction has relation to the debt, and not to the persons of the debtors.

Ch. XXIV. Cases of Disseisin.

If the jurors in petty assizes are of one mind, let one of them on behalf of all give their common verdict; and if they say that they know nothing, the plaintiff will recover nothing, for he has not proved his action; and if they are of different minds, they are not on that account to be threatened or imprisoned, but are to be separated from each other, and argued with, and diligently examined; and if any two jurors out of the whole set agree, that is enough

pur qi il testmoingnent ; e rien ne sunt examinables sur le title de sa possession einz suffist al juge savoir mon si lactour estoit desseisi de sa possession, le quel qe ele estoit droiturele ou torcenouse, solom la pleinte, car si ele fu torcenouse, pur ceo neqedent q*e* li tenaunt usa force, ou il dust aver use jugement, e ceo fist memes juge, est jugement rendable pur lactour, issi qil recovere sa seisine tele quele, sauve chescun droit *par* autre bref. Car assise ne tient mie lu sur assise de .j. tenement entre meme les parties ne atteinte sur atteinte. E si les jurours dient pur le quel qil eient juree sur laccion ou sur ascun excepcion fet ajuger pur li. E appent denquere des autres nomeez el bref, e si les disseisours ininterent a force e a armes, tut soit qil ne feirent damage a nul de son cors, trestuz neqedent sunt agardables a peine corporele solom la quantite del pecchie. E sil engete*r*ent de sa mansion ou de meson ou de sa meinee demoera la felonie de tel homsokne est punissable a la sute le Roi ou de la p*ar*tie. Car nul nest engetable de sa meeson ou il iad demore e la quele qil ad usee pur sue p*r*opre p*ar* un an saunz jugement, tut nen eit il nul title forq*e* p*ar* disseisine ou entrusion. E suffist pur force e armes soule montreison darmes pur enpourir les adv*er*saires. E en noun darmes sunt compris arcs, saietes, arbalastes, haches, lances, especies, bastons, fondes, targes, e ling armure e de fer. Pus fet enqere des damages cestassavoir des issues des tenemenz puis la disseisine fete e q*e* meins celes issues soient pus devenues, e des mises custagez e renables despenses q*e* lactour ad suffert entour soun recove*r*er, e en totes choses de cumbien il en est endamagie en descrees de ses biens e de sa honur. E les damages assummez,[1] soit agarde q*e* li pleintif recovere sa seisine tele quele p*ar* la

[1] Doubtful.

for the party for whom they testify; and they are not to be examined about his title to the possession, for it is enough for the judge to know that the plaintiff was disseised from his possession, whether that possession were rightful or wrongful; for albeit it was wrongful, nevertheless because the defendant had recourse to force instead of judgment, and made himself a judge, judgment shall be given for the plaintiff, that he recover his seisin such as it was, with a saving for every right which may be asserted under any other writ; but there cannot be assize upon assize, or attaint upon attaint, between the same parties as to the same tenement. And if jurors find for one party, then judgment must be given for him, whether they have been sworn to give a verdict on the action or on an 'exception.' And inquiry must be made as to the other persons named in the writ, and as to whether the disseisors came with force and arms; and if they came with force and arms, albeit they did no damage to the body of anyone, all of them shall be adjudged to a corporal punishment according to the quantity of their sin. And if they ejected the plaintiff from his mansion or his house where some of his family dwelt, the felony of this hamsoken is punishable at the suit of the king or of the party; for no one is to be ejected without judgment from his house in which he has dwelt and which he has used as his own for one year, albeit he has no title save by disseisin or intrusion. And there is 'force and arms' enough if there be but a show of arms to frighten the adverse party; and under the name of 'arms' are comprised bows, arrows, cross-bows, axes, lances, swords, staves, slings, shields and armour whether of linen or of iron. And afterwards inquiry must be made as to the damages, that is, of the issues of the tenements after the disseisin, to whose hands those issues have come, and of the costs, charges, and reasonable expenses to which the plaintiff has been put in and about his recovery, and in all respects how much he is damaged by decrease of his goods or of his honour. And the damages being taxed, it shall be awarded that the plaintiff do recover his seisin, such as it was, by the

veuue des jurours e les damages, e les disseisours sunt punissables solom les poinz des pecchiez.

Dendreit les biens trovez es tenemenz dunt nul ne poeit savoir lestimacion par cas sicom pur chartres, escriz loiaux, tresor e teles choses enserrees, ad lactour accion par appel de robberie ou par bref de trespas.

Li jugement de larcin atteint venalment a fere satisfaccion as pleintifs al double de la value de la chose emble. E de robberie al quadruple.

Ch. XXV. De Amerciement.

Peine peccunielle appelluns nous amerciementz qe soient reales peccheours [1] e mixtes, qe ascuns poinz sont en certein e en ascuns pointz nient. En certein amerciementz sunt en certein ascuns foiz solum les dignetiez des gentz, sicom est de contes e des barrons. Car cum tenaunt contie enteree est amerciable a c. li. quant meins est amercie. E baron de baronie en entere a c. marz. E qi meins entenent ou plus, solom la quantite de sa tenure. E ascune foiz par certein assize en autre cas sicom est de eschaps de genz retenues. En quel cas distinctez. Car ou len eschape de la prison le Roi, ou de lautri prison le Roi,[2] distinctez ou la cause est mortele ou veniale. E si mortiele distinctez ou la cause fu atteinte ou noun. E si atteinte par notorite de fet ou de droit, adunc tient lu peine corporele non certein. Car si li gardein .j. ou plusours soient assentaunz a leschap, adunc sue mortele peine. E si la cause ne fu mie atteinte e le gardein ne fu le ministre le Roi ne assentaunt a leschap, adunc est lassise de la peine c. souz desterl. ou plus solom lusage del pais ou de lu ou del prisone. E si la cause soit veniale, adunc nest mie leschap punissable. E si leschap

[1] Corr. *personels* (?). [2] Om. *le Roi* (?).

view of the jurors, and his damages, and the disseisors are punishable according to the particulars of their sins. As to the goods found in the tenement, of which the value cannot perhaps be estimated, *e.g.* charters, legal writings, treasure, and other things that are locked up, the plaintiff has his action by appeal of robbery or writ of trespass.

The judgment for larceny, when this has been proved in a venial action, is for satisfaction to the plaintiffs to the double value of the things stolen, and in case of robbery to the fourfold value.

Ch. XXV. Of Amercements.

Pecuniary punishments we call amercements, which are real, personal, or mixed, and sometimes are certain and sometimes uncertain. Amercements are certain in some cases according to the dignity of the persons amerced; thus it is with earls and barons, for one who holds a whole earldom is amerced at one hundred pounds at the least, and a baron for a whole barony at a hundred marks; and those who hold less or more are amerciable in proportion to what they hold. In some other cases the amercement is fixed by a certain assize, as is the case where prisoners have escaped. And here you must distinguish whether the escape be from the king's prison or from another prison, and if from the king's prison, then whether the cause of imprisonment was mortal or venial, and if mortal, whether this cause had been proved [attainted] or no; and if it has been proved, whether by notoriety of fact or notoriety of law, then there is an uncertain corporal punishment; for in this case if the guardian or guardians of the prison were assenting to the escape then a mortal punishment ensues; but if the cause was not yet proved, and the guardian was not the king's minister and was not assenting to the escape, then the assessment of the punishment is a hundred shillings sterling, or more or less according to the usage of the country or place or prison. And if the cause be venial, then the escape is not punishable. And if the escape be

se face de lautri prison, distinctez de la cause de la capcion ou la cause est mortele ou veniale. E si mortele, adunc tient lu veniale peccunielle avantdit. E de venial cause ne sont nulle peine pur nul eschap.

Ch. XXVI. Damerciement Taxable.

Somoouns[1] amerciemenz sont taxables par le serement e lafoerment de piers de ceux qi cheent en la merci solom la constitucion de la chartre des franchises, qe voet qe franc homme soit afeere quant il chiet en la merci solom la quantite de trespas, e issi qe sa contenaunce ne soit abaissee, marchant sauve sa marchaundise e villein sauve sa gaignerie; e ceus affoerours sont elizables par lassent des parties sil voillent estre. Les ministres le Roi neqedent sont plus grevables pur lur fei enfreinte.

Plusours cas sont qe peines corporeles sunt rachatees par fins de deners. E celes fins sont appellables raunceons qe sunt a taunt a dire com redempcions de corporeles peines. E dunc ascuns fins sunt comuns sicom pur murdres e pur personeux trespas de villes e de comuns des queles finz le Roi Edward ordena qe eles soient assises en la presence des justices si qe les nouns de ceux qi escoter idevient soient mis en roulles des justices, si qe les estretes veinent as viscountes allever par parceles e nemie par les totales summes. En cas ou lem recoere dette ou damages pur jugement ordena le Roi Edward qe en leleccion soit de ceux a fere les execucions par fere lever tieles dettes ou tieux damages des biens moebles as dettours ou de avoir touz lur biens moebles par verroi pris requis[2] a la vaillaunce des demandes forpris les boefs e les affres des charues ensemblement ovesqe la moite des terres e tenemenz as dettors, si les

[1] *Commons*, Houard. [2] Corr. *jeques*.

from a prison of some one other than the king, you must distinguish whether the cause of arrest be mortal or venial; and if it be mortal, then the aforesaid pecuniary penalty is applicable; and if it be venial, then there is no punishment for the escape.

Ch. XXVI. Of Taxable Amercements.

Common amercements are taxable by the oath and affeerment of the peers of those who fall into mercy according to the constitution of the charter of liberties,[1] which wills that the amercement of a free man shall be affeered according to the quantity of the trespass and so that his countenance be not abased, and the merchant with a saving for his merchandise, and the villain with a saving for his wainage. And the affeerors are to be chosen by the assent of the parties if they wish to be present. But the king's ministers are to be more severely charged, because of their broken faith.

There are divers cases in which corporal punishments are redeemed by fines in money; and these fines are called ransoms, which means that they are redemptions of corporal punishments. And some fines are 'common,' such as the murder fines and those inflicted on vills and communes for personal trespasses, and as to these King Edward ordained that they should be assessed in the presence of the justices, so that the names of those who ought to scot for them should be set down in the justices' rolls, so that the estreats might come to the sheriffs in parcels and not in gross sums.[2]

In cases where one recovers debts or damages by judgment, King Edward ordained that it should be in the election of the creditors to have execution made by levying such debts or damages from the movable goods of the debtors, or to have all their movable goods at the true price to the extent of the demand, save oxen and beasts of the plough, together with a moiety of the lands and tenements

[1] Mag. Cart. 1215, c. 20. [2] Stat. West. I. c. 18.

biens moebles ne suffisent a tenir, par certeine estente taunt qe les dettes ou les damages soient levez.

Es dreit de ceux qi sunt appellez ou enditez de felonie e ne sunt trovez, appent denquere coment il sunt cruz e nomement devant le Roi e ces justices erranz. E sil soient cruz par copables, adunc sunt il comandables a mettre en exigendes issi qe al primer countie apres leire soit li primer jour; e issi sunt il demandable par troiz countiez requis [1] al utlaguerie sil ne se rendent a la pees.

Ch. XXVII. Doffice des Justices en Eire.

Al office des justices en heire appent especialment enquere par jurours e par examinement des roulles as corouners de trestuz les utlaguiez pus la derreine heire, e pus la certificacion des nouns appent enquere des nouns de lur pleges, cest adire ou il furent en deseine ou en veuue de franc plege. E si lur pleges soient de meme lur contie, adunc sunt les pleges punissables par peine peccunielle pur ceo qe il neurent avant tieux cum il meinpristerent. E sil furent aillours en diseine, adunc appent denqere qi les recetta en cel countie en qi meinpai il furent. E ceux sunt punissables al foer des pleges par meme la reson.

Escrit eide des memoires des genz, sunt escriz chartres e monumenz mout necessaires pur tesmoignir les condicions e les poinz des contractz, de dons, des ventes, de fermes, e de autres par le statut Leuthfred qi ordena qe lem pust defendre ledengues diz e contractz nuz e desvetuz par sa lei ordena qe actours provassent lur escriz dediz e nient provables par veisins en Engleterre pur les foreins contractz par bataille ou par copie e collacion dautres seales ou par jurours solom leleccion des actours.

[1] Corr. *jeques*

of the debtors, if the movable goods were not sufficient, to hold according to a fixed 'extent' until the debts and damages should be levied.[1]

As to those who are appealed or indicted of felony and who are not to be found, it behoves that inquiry be made, and more particularly before the king and his justices in eyre, as to their credit. And if they be believed to be guilty, then command is to be given that they be put in exigend, so that the first county court after the eyre shall be the first of the days [for their exaction], and then they are demandable at three county courts until they are outlawed, unless they will surrender themselves to the peace.

Ch. XXVII. The Office of Justices in Eyre.

To the office of justices in eyre it especially belongs to inquire by jurors and by examination of the coroners' rolls concerning all those outlawed since the last eyre, and, after their names have been certified, to inquire also as to the names of their pledges, that is to say, where they were in tithing or view of frankpledge; and if their pledges are of the same county, then they are punishable by a pecuniary punishment for not having produced those who were in their mainprise; and if the pledges be elsewhere, then inquiry must be made as to who received those men in that county and in whose mainpast they were, and these are punishable as pledges would be, and for the same reason.

To aid the memory of men, writings, charters, and muniments are very necessary, to testify the conditions and particulars of contracts, gifts, sales, and so forth, by the statute of Leuthfred, who ordained that one might deny by one's law injurious words and contracts which are naked and devested, and he ordained that plaintiffs should produce their documents if they were denied and were not provable by neighbours in England, because they were foreign, and should prove these documents by battle, or by copy and collation of other seals, or by jurors, according to the election of the plaintiffs.[2]

[1] Stat. West. II. c. 18. [2] Text obscure and translation doubtful.

Si jurees par cas eient oscurement dotousement ou nient suffisaument pronuncie lur verdit en jugement en queuqe accion ou excepcion ou ascune des parties ensoit grevie, la tient lu remedie par commission de certificacion pur autre foiz fere revenir les jurours e les parties, ou covendra as pleintifs ou actours aver suz le seal le Roi ou del juge ou de la partie le proces de la parole avantdite e monstrer la defaute e le pecchie des jurours. En qe cas si juge troeve doute par examinement, cele doute est remenable en certein e oscuritie en claritie e errour a varitie e issi est le primer jugement redresceable.

If perchance jurors have too obscurely, dubiously, or insufficiently given their verdict in court on any action or 'exception,' or either of the parties feels aggrieved thereby, in that case there is a remedy by a commission of 'certification,' under which the jurors and the parties are again summoned, and it behoves the plaintiffs to have, under the king's seal or that of the judge, or that of the party, the process of the said suit, and to point out the default and sin of the jurors. And in this case if the judge finds doubt, then by an examination [of the jurors] the doubt may be reduced to certainty, and obscurity into clearness, and error into truth, and thus the first judgment may be redressed.

LIBER V. [DE ABUSIONS.]

1. Des abusions de la lei.

2. Des defautes de la *gr*ande ch*ar*tre.

3. Les rep*re*hensions des estatuz de M*er*tone.

3B. [Les rep*re*hensions des estatuz de Marleberge.]

4. Les rep*re*hensions des p*r*im*er*s estatuz de Westmoustier.

5. Les rep*re*hensions des secunz estatuz de Westmostier.

5B. [Sur lestatut de Gloucestre.]

6. Les rep*re*hensions de Circumspecte agatis.

7. La rep*re*hension de novel estatuz de marchanz.[1]

[1] Here follows *Incipit liber quartus de abusions.*

BOOK V. OF ABUSES.

1. Abuses of the Law.

2. Defects in the Great Charter.

3. Reprehensions of the Statutes of Merton.

3B. [Reprehensions of the Statutes of Marlborough.]

4. Reprehensions of the First Statutes of Westminster.

5. Reprehensions of the Second Statutes of Westminster.

5B. [On the Statute of Gloucester.]

6. Reprehensions of Circumspecte agatis.

7. Reprehensions of the new Statutes of Merchants.

LIBER V.

DE ABUSIONS.

Ch. I. Des Abusions de la Lei.

Plusours sunt q*e* dient q*e* coment q*e* autres reaumes use lei esc*ri*te soulle Engleterre neqedent use ses custumes e ses usages pur lei. Mes entre droiz usages e torcenouses ad grant differe*n*ce, car torcenous usages nient garantissables p*ar* lei ne soeffrables p*ar* seinte esc*ri*pture ne funt point a usure, example des larrons qi usages sunt a robber e emblir. E pur monstrer ascuns abusions tenues pur usages q*e* sont fraudes a la lei e repugnantes a droit nen sont trovez avouable p*ar* seinte esc*ri*pture est fet cest chapitre de une cueillecte de p*ar*tie de abusions de la lei des p*er*sones en afforcement de la conoissaunce de la dreite lei e des v*er*reis usages.

Abusion est desus ou mesus de dreit usages tournent en abusions, ascune foiz p*ar* contr*ai*retie e repugnaunce a dreit, ascune foiz p*ar* trop user, ascune foiz p*ar* nent ou trop poi user, e ascune foiz p*ar* trop largement user.

1. La premere e la soverein abusion est q*e* li Roi est outre la lei, ou il dust estre subject, sicom est contenu en son serement.

2. Abusion est q*e* ou les parlementz se duissent fere sur les sauvacions des almes des trespassours e ceo a Lond*r*es e as .ij. foiz par an, la ne se funt il ore forq*e* rerement e a la voluntie le Roi sur eides e cueillettes de tresor. E ou les ordenaunces se duissent fere de comun assent del Roi e de ces [1] countes la ce funt ore p*ar* le Roi e ces [1] clercs

[1] Corr. *ses*.

BOOK V.

OF ABUSES.

Ch. I. Abuses of the Law.

There are some who say that, while other realms make use of written law, England alone makes use of her customs and usages as law. But between right and wrongful usages there is a great difference; for wrongful usages, which are not warrantable by law nor allowable by holy writ, are not to be followed, *e.g.* the usage of thieves which is the usage to rob and steal. And to set forth certain abuses which are held for usages, and which are frauds on the law and repugnant to right and not avowable by holy writ, is the object of this chapter, which makes a collection of a part of the abuses of the law of persons as a supplement for the knowledge of right law and true usages.

Abuse is disuse or misuse of right usages, turning them into abuse, sometimes by contrariety and repugnance to right, sometimes by excessive use, sometimes by non-use or deficient use, and sometimes by extravagant use.

1. The first and sovereign abuse is that the king is beyond the law, whereas he ought to be subject to it, as is contained in his oath.

2. It is an abuse that whereas parliaments ought to be held for the salvation of the souls of trespassers, twice a year and at London, they are now held but rarely and at the king's will for the purpose of obtaining aids and collection of treasure. And whereas ordinances ought to be made by the common assent of the king and his earls, they are now made by the king and his clerks and by aliens and

e par aliens e autres, qi nosent contreviner le Roi, einz desirent del plere e de li conseiller a son proffit, tut ne soit mie lur conseil covenable al comun del people, sanz appeller les countes e saunz suire les riules de droit, e dunc plusours ordenaunces se foundent ore plus sur la voluntie qe sur droit.

3. Abusion est qe les leis ne les usagez del Reaume ovesqe lur enchesons ne sunt mie escrit par quoi il soient connus issi qil pussent estre seuz de tuz.

4. Abusion est qe force vaut en deseisines apres le tierce jour de pesible seisine, desicom il nest mie digne destre eide de la lei qi se defie de jugement e use la force.

5. Abusion est qe dreit prent ore delai en la court le Roi plus qe aillours.

6. Abusion est de soeffrir nul el reaume outre xl. jours qe seit del eage de xiij. anz ensuz, soit Engleis, seit alien, sil ne soit juree al Roi par serement de feautie e pleviz e en diseine.

7. Abusion est qe clers e femmes sont exempz de fere al Roi le dit serement, desicom le Rei prent lur homage e lur feautie pur terre.

8. Abusion est a tenir eschap de prison ou de brusure de gaole pur pecche mortel, car cele usage nest garanti par nule lei ne nule part est usie forqe en cest reaume e en Fraunce einz est len garaunti de ceo fere par lei naturell.

9. Abusion est a soffrir taunt de fourme de brefs pledables, e de ceo nomeement qe les brefs sunt clos e nient patenz a foer de brefs de dreit. E de ceo qe len les fet a enterligneire a rasture e autrement vicious.

10. Abusion est qe la monoie ne soit quarterable, qele nest dargent fin, qe ele tenu par able si le forein cercle ne isoit entier, daillaier la monoie ou len met xviij. d. e maille pesaunz de quivre a chescun .xx. s.

11. Abusion est qe le Roi prent plus de xij. d. pur la change de chescun livre.

others who dare not oppose the king but desire to please him and to counsel him for his profit, albeit their counsel is not for the good of the community of the people, and this without any summons of the earls or any observance of the rules of right, so that divers ordinances are now founded rather upon will than upon right.

3. It is an abuse that the laws and usages of the realm with their occasions are not put in writing, so that they might be published and known to all.

4. It is an abuse that force may be used in disseisins after the third day of peaceable seisin, whereas he is not worthy of the law's aid who, defying judgment, uses force.

5. It is an abuse that nowadays right is longer delayed in the king's court than elsewhere.

6. It is an abuse that any is suffered to be in the realm beyond forty days who is over the age of thirteen years, be he English, be he alien, without being sworn to the king by the oath of fealty and being pledged and put in tithing.

7. It is an abuse that clerks and women are excused from taking this oath to the king, whereas he takes their homage and fealty for land.

8. It is an abuse that an escape from prison or breach of gaol is accounted a mortal sin, for this usage is warranted by no law, and does not obtain anywhere save in this realm and in France, and one is warranted by the law of nature [in attempting to escape].

9. It is an abuse that there are so many forms of pleadable writs, and in particular that the writs are close and not, like the writ of right, patent. Also that they have interlineations and erasures in them and are otherwise vicious.

10. It is an abuse that money is not quarterable, that it is not of fine silver, that it is good tender although the outer circle be not perfect, that it is alloyed by eighteen and a half pennyweights of copper in every twenty shillings.

11. It is an abuse that the king takes more than twelve pence on the change of every pound.

12. Abusion est qe nule livre est sofferte a peser xxv. d. ou plus de xij. unces.

13. Abusion est qe *trai*son ne sateint plus p*ar* appeaux qe ne fet.

14. Abusion est qe hom*m*e homicide p*ar* necessitie ou ove la pees e nient felonessement est retenu ou pris taunt qe il est purchace la ch*artr*e le Roi de pardon de la mort aussi com p*ar* mescheaunce.

15. Abusion est a tenir les biens moebles de futifs a forfez einz ces[1] qil soient atteinz de felonie p*ar* utlaguerie ou autrement.

16. Abusion est de utlaguer hom*m*e einz ces[1] qil en eit enquis p*ar* se*rement* des veisins qil en soit mescru.

17. Abusion est qe lem soeffre genz atteintes de felonie estre p*ro*vours e aver voiz a hom*m*e loial, e qe clers, fem*m*es, enfaunz e autres qe ne poent cumbatre sunt suffertz destre p*ro*vours.

18. Abusion est qe autre resceive les appeaus des p*ro*vours qe corouners, e qe il sunt suffert dappeler plus de une foiz ou p*ar* destreser ou p*ar* aticement de enemis ou en autre manere faussement.

19. Abusion est qe justice chace loial home prendre sei a pais ou il se p*ro*ffre sei defendre countre provour par soun cors.

20. Abusiou est de chac*er* genz appellez de provour a la quitance ou li p*ro*vour renie son appeal, sil nen soit aillors enditie, ou ap*re*s la menceonge de p*ro*vour atteinte ou ap*re*s la mort de p*ro*vour.

21. Abusion est de suffrir provour vive ap*re*s ceo qil se*rra* atteint a mentour de son appeal.

22. Abusion est a suffrir larrons e felons escriez e notoires estre defenduz de seintuaires.

23. Abusion est qe tieux felons qi forjurent le reaume ne sunt mie suffert de eslire port ou passage hors del

[1] Corr. *ceo*.

12. It is an abuse that any pound should be suffered to weigh twenty-five pennyweights or more than twelve ounces (?).

13. It is an abuse that treason is not more commonly attainted by appeals than is the case.

14. It is an abuse that a man who has committed homicide of necessity, or for the peace, or in self-defence, is taken or detained until he has purchased the king's charter of pardon, just as though it were a case of misadventure.

15. It is an abuse that the movable goods of fugitives are held as forfeited before they have been attainted of felony by outlawry or otherwise.

16. It is an abuse to outlaw a man before an inquest of his neighbours has been taken as to his ill repute.

17. It is an abuse that men attainted of felony are suffered to be approvers and make accusations against lawful men; and to suffer clerks, women, children, and others who cannot fight to be approvers.

18. It is an abuse that anyone, save coroners, should receive the appeals of approvers, or to suffer them to make appeals more than once, or under compulsion or at the instigation of enemies, or in some other false manner.

19. It is an abuse that justices drive a lawful man to put himself upon his country when he offers to defend himself against an approver by his body.

20. It is an abuse to drive folk who are appealed by approvers to an acquittal, when the approver denies his appeal and they are not otherwise indicted, or to drive them to an acquittal after the approver's lie has been attainted, or after the approver's death.

21. It is an abuse to suffer an approver to live after he has been attainted as a liar in his appeal.

22. It is an abuse to suffer thieves and felons, proclaimed and notorious, to be defended by sanctuaries.

23. It is an abuse that felons who abjure the realm are not allowed to choose their own port of departure from the

reaume. Abusion est de les assigner port e de limiter lur jornees.

24. Abusion est qe tieux entrent en la meer e de lever la menee sur la meer, e les assentis costices[1] as grantz chemins lur sont defenduz e qe il ne poent tenir e aver les chemins e les hostiex al foier des pelrins.

25. Abusion est a juger murdre par defaute denglescherie desicom meindre[2] dust estre la peine de engleis de alien.

26. Abusion est qe aquitaunces des paiemenz fez au Roi al eschecqere se funt par tailles e ne mie par le seal a ceo assigne.

27. Abusion est qe les ministres del eschecqere eient juresdiccion dautre chose qe des deners le Roi, de ces fieus e ces franchises, saunz bref originall de la chauncellerie souz blanche cire.

28. Abusion est de veilles estretes de lexchecqer des dettes le Roi e a mal tort dorment ou delaient ses dettes allever, de sicom les arrerages des viscountes e dautres recevours le Roi sont levables saunz delai de ceux qe les imistrent sil ne suffisent, e les arreragez des dettes dautres sunt levables de la surtie ou les principaux ne suffisent, e les arrerages des issues sunt levables des viscountes ou des ceux qi le imistrent, e les arrerages des amerciemenz sunt levables des affoerours si les principaux ne suffisent. E issi des fins e de totes autres dettes le Roi, par quoi piert qe nule dette ne doit mie mout delaier, einz quident plusours qe nul nest charge de auncienne dette si noun par malice ou par la negligence des ministres le Roi.

29. Abusion est qe ceux del eschecqer ou autres receivent attornez ou conussaunces sanz original brief de la chauncellerie de si qe nul nel poet fere saunz jurediccion.

30. Abusion est qe autres qe francs hommes fieu tenaunz

[1] *e les scntiers jesques* (1642). [2] *murdre* (1642).

realm. It is an abuse that ports are assigned to them and their journeys limited.

24. It is an abuse that these abjurers are compelled to wade into the sea and raise hue over the sea, and that the footpaths that run beside the great roads are forbidden them, and that they cannot use the roads and hospices in the manner of pilgrims.

25. It is an abuse to adjudge a murder for default of Englishry, whereas the punishment in the case of an Englishman should be less than that in case of an alien.

26. It is an abuse that acquittance for payments made to the king at the exchequer are made by tally and not under the seal appointed for this purpose.

27. It is an abuse that the officers of the exchequer have jurisdiction in matters other than debts due to the king and his fees and franchises, without original writ from the chancery under white wax.

28. It is an abuse that estreats of the exchequer for old debts due to the king lie dormant and are delayed wrongfully, whereas the arrears of sheriffs and other the king's receivers are leviable without delay from those who gave them their places, if they themselves be not sufficient, and the arrears of other debts are leviable from the sureties, if the principal debtors be not sufficient, and the arrears of issues are leviable from the sheriffs or those who gave them their places, and the arrears of amercements are leviable from the affeerers if the principal debtors be not sufficient; and so with fines and other crown debts; whereby it appears that no debt should be long delayed, insomuch that there are some who think that no one is charged with an ancient debt unless this be by malice or by the negligence of the king's officers.

29. It is an abuse that those of the exchequer and others receive attorneys and recognizances without original writ from the chancery, whereas no one can do this who has not jurisdiction.

30. It is an abuse that any should have an ordinary

eient jurediccion ordinaire ou aillurs forqe es courz des seignurs des fieus ou des hundreders ou des countiez.

31. Abusion est damercier nul homme par garaunt de presentements sur personel trespas desi qe nul nest amerciable forqe sur le pecchie de real accion ou de mixte.

32. Abusion est damercier nul homme par nul presentement fet de meins qe de xij. francs homes jurees.

33. Abusion est de mettre amerciemenz en certein saunz laffoerement de francs homes a ceo jureez.

34. Abusion est daffoerer amerciemenz en labsence des amerciez si voillent estre.

35. Abusion est de charger les jurours de nul article tochaunt tort fet de veisin a veisin.

36. Abusion est a crere qe home eit jurediccion assignee si sa commission nel voille.

37. Abusion est obeir a juge de qi tort len appelle; example piert el auncien brief de dreit, et nisi feceris vicecomes faciet.

38. Abusion est qe franc home seit fet le ministre le Roi par ascune eleccion sil nel voille estre.

39. Abusion est qe salaires de countours ne sunt mis en certein.

40. Abusion est qe les defendaunz nunt nules amendes des torcenous pleintifs.

41. Abusion est countours sont esperniez destre serementez solom les poinz chargeables.

42. Abusion est de suspendre countour sil ne seit atteint de orde[1] trespas dunt il est condempnable a corporele peine.

43. Abusion est a somondre homme pur personel pecchie.

44. Abusion est a juger homme a la mort pur felonie par suitiers, si noun en cas si notoires qe respons ne juree ne iad mestri ne lu ne poez tenir.

45. Abusion est a comencer appel aillours qe devaunt

[1] *laide* (1642).

jurisdiction save free men holding fees, or that anyone should have it save in the courts of the lords of fees and the hundred and county courts.

31. It is an abuse to amerce a man on the warrant of a presentment of a personal trespass, since no one is amerciable save for sin in a real or mixed action.

32. It is an abuse to amerce a man on a presentment made by less than twelve free men who have been sworn.

33. It is an abuse to fix an amercement at a certain sum without the affeerment of free men sworn for this purpose.

34. It is an abuse to affeer amercements in the absence of the amerced, if they wish to be present.

35. It is an abuse to charge the jurors to make presentment of wrongs done by neighbour to neighbour.

36. It is an abuse to believe that a man has a delegated jurisdiction, unless he has a commission stating this.

37. It is an abuse to obey a judge from whose tort one is appealing, as may be seen, *e.g.*, from the ancient writ of right, with its ' et nisi feceris, vicecomes faciet.'

38. It is an abuse that a free man should be elected to serve as the king's officer against his will.

39. It is an abuse that the salaries of pleaders are not fixed.

40. It is an abuse that defendants get no amends from tortious plaintiffs.

41. It is an abuse that pleaders are excused from being sworn according to the articles.

42. It is an abuse to suspend a pleader, if he be not attainted of some foul trespass for which he might be condemned to corporal punishment.

43. It is an abuse to summon a man for a personal sin.[1]

44. It is an abuse to adjudge a man to death for felony on the testimony of suitors, except in cases so notorious that there is no need or room for any answer or jury.

45. It is an abuse to begin an appeal elsewhere than

[1] Summons is appropriate to real and mixed actions.

corouner del contie e *par* ceo piert q*e* brief dappel ad fol fundement cu*m* brief trovie sur errour.

46. Abusion est de lesser p*ar* pleges hom*me* appele ou endite de mortiel pecchie p*r*incipalment.

47. Abusion est a t*er*miner appel de felonie p*ar* juges ordenaires sutiers.

48. Abusions est q*e* totes p*er*sones sunt *com*uniment [1] recevables en appeals de felonie.

49. Abusion est q*e* enfanz dedenz age ne sunt mie touz en garde.

50. Abusion est q*e* genz poent aliener lur heritages de lur heirs plus q*e* le q*u*art ou lur purchaz de fieus ou fere ne poent assignez, car nul ne poet fere assignie ou nul assignie nest contenu el purchaz.

51. Abusion est q*e* les heritages des heires femeles sunt tenues en garde, tut soient de hauberc, cum de heirs malez de sic*om* fem*me* receit son eage al t*er*me de xiiij. anz de eage.

52. Abusion est q*e* gaolers ou lur sov*er*eins despoillent p*r*isons e lur tolent autre chose q*e* armeures.

53. Abusions est q*e* p*r*isons ou autre pur eux paient rien p*ur* lur entres a la gaole ou pur lur issues.

54. Abusion est q*e* p*r*ison soit charge de fer ou mis en peine avant ceo q*e* il soit atteint de felonie.

55. Abusion est q*e* les gaoles ne sunt deliv*r*ees des p*r*isons deliv*er*able saunz delai apres brief purchace.

56. Abusion est a fere hom*me* respondre a la sute le Roi ou il nest endite ne appellie.

57. Abusion est denp*r*isoner autre q*e* hom*me* enditee ou appelle de felonie saunz especial garaunt, si en cas no*n* pur defaute des pleges ou de meinpernours.

58. Abusion est q*e* justices delivrent p*r*isons nient p*r*is avaunt la date de lur garanz, e desic*om* lentencion le Roi ne se poet estendre forq*e* a ceux qi adunc sunt detenuz en p*r*ison.

[1] Apparently so, but the *com* is ill written.

before the coroner of the county, and thereby it appears that the writ of appeal is vain writ as being one based on error.

46. It is an abuse to let out on pledges one who is appealed or indicted as a principal for a mortal sin.

47. It is an abuse that suitors as judges ordinary should determine an appeal of felony.

48. It is an abuse that all persons without distinction are received in appeals of felony.

49. It is an abuse that all infants under age are not in ward.

50. It is an abuse that men can alienate more than a quarter of their inheritances away from their heirs, and can alienate fees acquired by purchase, although they cannot make assigns, for no one can make assigns if 'assigns' be not mentioned in his purchase deed.

51. It is an abuse that the inheritances of female heirs are kept in ward just as though they were those of male heirs, and this although they be hauberk fees [knight's fees], whereas a woman attains full age at fourteen.

52. It is an abuse that gaolers or their superiors despoil prisoners and take from them other things besides their armour.

53. It is an abuse that prisoners or others on their behalf should pay anything on entering or leaving gaol.

54. It is an abuse that a prisoner should be loaded with iron or put in pain before he is attainted of felony.

55. It is an abuse that gaols are not delivered of deliverable prisoners without delay after writ purchased.

56. It is an abuse to make a man answer to the king's suit when he is not indicted or appealed.

57. It is an abuse to imprison a man who is not indicted or appealed of felony, unless this be by special warrant or for default of pledges or mainpernors.

58. It is an abuse that justices should deliver prisoners who were not arrested at the date of their warrant, for the king's intention expressed in the commission can only extend to those who were in prison at its date.

59. Abusion est qe le bref de odio et atia ne tient lu forqe en homicidie.

60. Abusion e qe cel brief tient lu a enditez.

61. Abusion est qe appellez ou endites de mortel crim sunt sufferz hors de prison par plevine ou ceux qi sunt condempnez a corporele peine einz ces[1] qil facent lur penaunce ou qil eient rachatie par fin de peine peccuniell.

62. Abusion est qe les briefs de sicut alias e sicut pluries passent le seal en cas ou appendreit de fere tieux ministres com inobedienz a droit e al Roi e de charger ent autres a fere tieu maundement.

63. Abusion est a mettre cestes paroles en briefs nisi captus sit per speciale preceptum nostrum vel capitalis justiciarii nostri vel pro foresta nostra e cet. Car nul especial mandement deit passer commun dreit.

64. Abusion est de soffrir qe juges soient actours pur le Roi.

65. E abusion est qe alienes ou autres qi nunt mie jurie feautie al Roi ou infames ou endites ou appeles de crim mortel ou qi nunt point de commission suffisaunt ou ascun apres tort fet ou apres jugement rendu sunt sufferz davoir juresdiccion ou de juger hors des poinz especefies en lur commission.

66. Abusion est qe len pince[2] en appeax par countier les partes del monde e les nons des rues e les hours des jours en countre la pees desicom chescun pecchie est contre la pees e tieles autres paroles nient necessaires.

67. Abusion est de abatre appeals suffisaunz solom lestatut de Gloucestre.

68. Abusion est qe briefs remediaux sunt veniales, e qe le Roi mande as viscountes pernez sieurtie de tant a nostre oes pur le brief, car par le purchaz de tieux briefs porroit lem destrure son enemi torcenousement. E par ceo qe

[1] Corr. *ceo.* [2] Perhaps *puice*; 1642 gives *len preints.*

59. It is an abuse that the writ *de odio et atia* can only be obtained in case of homicide.

60. It is an abuse that this writ is applicable to those who have been indicted.

61. It is an abuse that men appealed or indicted of mortal crime are allowed to be out of prison on pledge, and those also who have been condemned to corporal punishment and who have not yet done their penance or redeemed it by fine and pecuniary penalty.

62. It is an abuse that writs *sicut alias* and *sicut pluries* should pass the seal, when instead of this the officers, to whom they are sent, ought to be treated as disobedient to the law and the king, and others should be charged to carry out the original command.

63. It is an abuse to put in the writ [of mainprise] 'unless he has been arrested by our special command or that of our chief justice or for our forest, &c.,' for no special command should override common law.

64. It is an abuse to suffer judges to be plaintiffs for the king.

65. It is an abuse that aliens, or others who have not sworn fealty to the king, or the infamous, or those indicted or appealed of mortal crime, or those who have no sufficient commission, or any persons after a tort has been done or after judgment has been given, should be suffered to have jurisdiction or [that any should] judge outside the points specified in their commission.

66. It is an abuse that in appeals one should have to mention (?) the parts of the world and the names of streets and days and hours, and to say 'against the peace,' for every sin is against the peace and the other phrases are unnecessary.

67. It is an abuse to abate appeals which are sufficient according to the Statute of Gloucester.

68. It is an abuse that remedial writs are vendible, and that the king should bid the sheriff take surety for a certain sum 'to our use' for the writ, because by the purchase of such writs one might tortiously destroy one's

tieles fins sunt enroulles e puis courrent en estretes tut ne facent les si damage noun as purchaceours.

69. Abusion e qe foreins ne sont mie recevables en accions par sieurtie des frances qe point nunt poer a trover pleges.

70. Abusion est a destreindre par biens moebles en personeles accions ou le proffit des issus devien tut au Roi e nul proffit nen accrest as pleintifs.

71. Abusion est qe nule pleinte est recevable a audience sanz sute presentee a tesmoigner la pleinte estre verroie.

72. Abusion est qe len dit qe villenage nest mie franc tenement e ceste assise ne siert nient a ejeccion de terme des ans sicom fet de tenement tenu a terme de vie ou a jammes. Car villein e serf ne sont mie .j. en voiz nen significacion, einz poet checun franc home tenir villenage a li e a ces [1] heirs fesant le servage e le charge del fieu.

73. Abusion est a crere [2] qe plener seisine nacrest mie a purchaceour taunt cum li donour i soeffre e lest ces [1] chatieux, car sicom contract se fet de mariage par conjunction de volunties de home e de femme, tut soit qe lun se repent e tantost apres lesposailles sen voudra retrere, mes ne se porra li contract desjoindre, einz isuffist confermement del contract par baille sieuant e par celebracion [3] de esposail, tut ne i eit le purchaceour autre seisine par prise de esplez ne chartre ne escrit pur tesmoigner le contract. E tut fust qe femme tantost apres lesposaille fust ravie e tollecte [4] e li mari sen pleinsist [5] e li ravissour responaunt a la pleinte deist qe li mari naveroit dreit naccion, pur ceo

[1] Corr. *ses*.
[2] *atrere*, MS.
[3] *cebracion*, MS.
[4] Or *collecte*, MS.; *consent* (1642).
[5] *se emplevist* (1642)

enemy, and because these fines are enrolled and afterwards are current in estreats, albeit the purchaser has got nothing but damage by the writ.

69. It is an abuse that foreigners who cannot find pledges are not receivable in actions on the surety of Frenchmen.

70. It is an abuse to distrain by movable goods in personal actions, where the whole profit of the issues comes to the king and no profit accrues to the plaintiff.

71. It is an abuse that a plaint should be received and heard where there are no suitors presented to testify that the plaint is true.

72. It is an abuse to say that villainage is not free tenement, and that the assize [of novel disseisin] is not as applicable to the ejectment of a tenant for years as to that of one who holds for life or for ever; for 'villain' and 'serf' are not all one either in sound or in meaning, and any free man may hold villainage to him and his heirs doing the service and bearing the burden of the fee.

73. It is an abuse to believe that plenary seisin should not accrue to a purchaser of land so long as the vendor has left his chattels behind him.[1] Take a parallel case. A contract of marriage is made by the union of the wills of man and woman, and neither of them can retreat from it after the moment of espousal although desirous to do so, and the contract cannot be undone, for by way of confirmation it is enough that there has been a bailment of seisin by virtue of the celebration of the espousals, albeit the purchaser [husband] has no other seisin than this, and there has been no taking of esplees and no charter nor writing to witness the contract; and if the woman immediately after the espousal is ravished and carried off [?] and the husband makes plaint, and the ravisher, in answer to the plaint, says that the husband has no right nor action, for

[1] In their anxiety to make the livery of seisin a reality, the judges seem to have been inclined to hold that if the feoffor has not removed his chattels from the land he has not really given up possession, but is retaining it *animo* if not *corpore*. Our author argues against this in an elaborate passage.

qil nen fu unqes seisi plenerement par prise de esplez, ou deist qil memes nestoit unqes hors de seisine de la femme pur ceo qe ele fu vestu de sa robe e par la robe remist il en seisine de voluntie, rien ne li deit lexcepcion valoir pur escuser son tort, nient plus qe en cest cas. Si ascun achat chival e face ent gre al vendour e li vendour face ent le bail a lachatour, tut soit qe li vendour sen repente e de sa force repreigne le chival, e tut[1] qe lachatour nad nule accion pur ceo qe il memes remist touz jours en seisine de voluntie par ceo qe il nen ousta unqes ses chatieus pleinement par une seele qe il i lessa sur le cheval, rien ne vaudreit lexcusacion.

74. Abusion est a quider qe contractz se defunt en biens nient moebles autrement qe en bien moebles.

74 (A). Abusion est a quider qe escriz e chartres facent estat e de user a fere les chartres de feffemenz avant transmitacion de seisine, desicom chartre est viciouse qe testmoint doun estre fet ou la transmitacion nest mie uncore fete de la seisine, car nul doun ne vaut sanz bail de seisine.

75. Abusion est quider qe seisine naccrest mie si tost a purchaceour de soun porchaz com a heir de son heritage, desicom dreit ne requert qe .iij. choses en contractz, conjuncion des voluntiez, satisfaccion al donour, e bail de la possession. E dunc si transmitacion de seisine soit fete al purchaceour par le donour a houre de prime,[2] li purchaceour moerge a houre de tierce, il moert aussi bien seisi del tenement cum il froit de femme ou de cheval, tut nen eit li donour oustie e remue pleinement ses chatieux, ne unqes ne vient de bone foi a dire qe franc tenement apres transmitacion de seisine par simple bail demoert el brief[3] le doneour, qe remeint el tenant apres tel bail del tene-

[1] Corr. *dit* (?).

[2] The MS. begins a new paragraph.

[3] Corr. *chief* (?).

that he was never seised by taking esplees, or says that he [the ravisher] was never out of seisin of the woman, for that she was wearing a dress of his, and by that dress he retained seisin 'animo,' this exception will not avail him to excuse his tort. And so it is in the case before us. If one buys a horse and makes agreement with the vendor, and the vendor makes delivery of the horse to the purchaser, then if the vendor repents and takes back the horse by force, and says that the buyer has no action because he [the vendor] all along remained in seisin of the horse 'animo,' and had never wholly removed his chattels because he had left his saddle on the horse, this excuse would not avail him. [So with land.]

74. It is an abuse to suppose that contracts in the case of immovables can be undone otherwise than in the case of movables.

74 (A).[1] It is an abuse to suppose that writings and charters can make an estate, and to make charters of feoffment before the transmutation of the seisin, for a charter is vicious if it testifies that a gift has been made whereas as yet there has been no delivery of seisin, for no gift is of any avail without delivery of seisin.

75. It is an abuse to suppose that seisin will not accrue so soon to a purchaser in respect of what he has bought, as to an heir in respect of his inheritance; for law requires but three things for a contract, (1) union of wills, (2) satisfaction to the giver, (3) delivery of possession; and so if seisin be given by the donor to the purchaser at the hour of prime, and the purchaser dies at the hour of terce, he dies seised, just as though the case related to the seisin of a wife or of a horse; and this, albeit the donor has not utterly ousted and removed his chattels; and never from good faith can arise the assertion that after a transmutation of seisin by simple delivery the freehold remains on the side of the donor, for it remains in the tenant after this delivery of the tenement. However, if the purchaser does

[1] This clause was omitted in the old edition.

ment, mes si le gre le doneour nen soit mie fet solom les contractz adunc i eide bon foi.

76. Abusion est a quider qe len ne poet recoverir terme de anz ne presentemenz de eglises par ceste assise en maner de disseisine desicom plusours reesons purroient valer a redeseisours.

77. Abusion est qe atteintes ne sunt grauntes en la chancellerie sanz difficultie pur touz faus jurours atteindre aussi ben en totes autres accions personeles reales e mixtes com en petites assises.

78. Abusion est de chacier naam hors del hundred.

79. Abusion est a fere la veuue de naam al baillif, cinz suffist pleinte e countier qe uncore en est seisi.

80. Abusion est qe len ne siue torcenouse destresce par moz de felonie e qe len natteint teles robberies a la sute le Roi.

81. Abusion est qe dreit sacorde a vicious contractz e as defenduz e medlees de pecchie. Nest mie usure pecchie? Nest mie enprisonement pecchie? Coment se poet dunc obliger a usure ou a enprisonment ou a disseisine sil ne pecchie?

82. Abusion est qe avocsons de eglises soient alienez de dreit saunz par doeires[1] par gage ou par ferme ou soit partable.

83. Abusion est qe fermes se funt a termes de plus de xl. ans par quoi qe continuance de seisine e longur de tens desherite nul homme.

84. Abusion est qe nul tere est lessee a ferme en fieu ou a anz rendant rent par an au plus qe la value de la quarte partie.

85. Abusion est de utlaguer home pur defaute en cas ou la principale cause nest mie felonie.

86. Abusion est qe auditours sunt donables par les seignurs pur aconte oir saunz lassent des baillifs.

[1] *sont aliens de droit sans perdans par gage* (1642). But read *dreit saunc.*

not perform his part of the agreement according to the contract, then good faith may aid the donor.

76. It is an abuse to suppose that terms of years and presentments to churches cannot be recovered by the assize of novel disseisin, since [were this so] divers reasons might avail a redisseisor.[1]

77. It is an abuse that writs of attaint are not granted in the chancery without difficulty for the attaint of all false jurors, as well in all other actions, personal, real, or mixed, as in the petty assizes.

78. It is an abuse to drive a naam out of the hundred.

79. It is an abuse to make view of a naam to a bailiff, but a plaint is enough with a 'still seised' in the count.

80. It is an abuse that tortious distresses are not prosecuted as felonies, and that these robberies are not attainted at the king's suit.

81. It is an abuse that law should suffer vicious contracts and such as are forbidden, and those in which sin intervenes. Is not usury a sin? Is not imprisonment a sin? How, then, can a man oblige himself to usury, or imprisonment, or disseisin, without sin?[2]

82. It is an abuse that advowsons of churches should be alienated from the right blood by dowers, by gages, and by leases, and that they should be partible.

83. It is an abuse that leases should be made for more than forty years, so that continuance of seisin and lapse of time may disinherit no one.

84. It is an abuse that land should be let to farm in fee or for years at an annual rent exceeding a fourth of the annual value.

85. It is an abuse to outlaw a man for a default when the original cause of the action is not felony.

86. It is an abuse that lords should appoint auditors to hear their bailiffs' accounts without the consent of the bailiffs.

[1] If there can be no disseisin, there can be no redisseisin; and thus, without incurring the grave punishment of the redisseisor, one might repeat the offence of wrongfully appropriating to oneself a presentation or a term of years.

[2] A hit at the Statute *de Mercatoribus*.

87. Abusion est qe bailifs nunt nul recoverer des damages des torcenouses auditours.

88. Abusion est qe regard se fet as persones, quant au tiel dreit nest ordene as bailifs ver lur seignurs com le revers endreit des dettes dues de lun a lautre.

89. Abusion est qe homme puisse chalenger celi por soun naif a qi il ne trova unqes sustenaunce, desicom serf nest mie serf forqe taunt qil est agarde, e de si qe nul ne poet chalenger son serf pur serf, tut soit il en sa garde, sil ne troeve sustenaunce a son serf qi le vaut mees e terre en son fieu ou il purra gaigner sa sustenaunce ou autrement le retient en son service.

90. Abusion est qe serfs sunt franc pleges ou pleges de franc home.

91. Abusion est soffrir qe autriz serfs soient en autriz veuues.[1]

92. Abusion est qe seignurs soeffrent lur serfs pledir ou estre emplede sanz eus, car serf nest mie amerciable en autri court por ceo qe il ne poet ren perdre com cil qe rien nad propre.

93. Abusion est a tenir villeins serfs, e ceste abusion norrust[2] grant destruccion de poure poeple, grant poverte e grant pecchie.

94. Abusion est qe hume soit somons qe nest fiu tenaunt.

95. Abusion est a somondre homme aillurs forqe e le fieu contenu en la demande, si fieu isoit contenu.

96. Abusion est qe homme travaille a ces propres custages par nuli somonse personele.

97. Abusion est qe justice ou autre face somonse qe nest fieu tenaunt en meme la contie.

98. Abusion est de somondre homme sanz garnir le renablement sur quele chose respondre.

[1] Or *venues*.

[2] *merust* (1642).

87. It is an abuse that bailiffs cannot recover damages against tortious auditors.

88. It is an abuse that in this action of account there should be respect of persons, for bailiffs cannot thereby recover against their lords debts due to them by their lords, though in the converse case the action lies.

89. It is an abuse that one can claim as a bondman him for whom one has never found sustenance, whereas a *servus* is only a *servus* so long as he is in ward [*servus* a *servando*], and whereas no one ought to claim as a serf even one who is in his ward unless he finds sustenance for this serf, or an equivalent, namely house and land in his fee whence the serf may gain his sustenance, or in some other way retains the serf in his service.

90. It is an abuse that serfs should be frankpledges or pledges of a free man.

91. It is an abuse to keep the serfs of another man in one's view of frankpledge.

92. It is an abuse that lords allow their serfs to plead and be impleaded without them, for serfs are not amerciable in another man's court, since they can lose nothing, having nothing of their own.

93. It is an abuse to count villains as serfs, and this abuse gives rise to great destruction of poor folk, great poverty, and great sin.

94. It is an abuse that one who is not a fee tenant should be summoned.

95. It is an abuse to summon a man elsewhere than on the fee that is put in demand, if there be a fee in the demand.

96. It is an abuse if on any personal summons a man is obliged to journey at his own costs.

97. It is an abuse if a justice or other man who is not a fee tenant in the same county makes a summons.

98. It is an abuse to summon a man without giving him reasonable notice of the matter about which he is to answer.

99. Abusion est qe fauses causes sunt recevables de essoignez de si qe dreit nallouue fausserie ne [1] nul cas.

100. Abusion est qe essoigne est allouue en personel accion al defendaunt, desicom len est meinpris daver en court par meinpernours.

101. Abusion est a resceivre essoigne retee [2] par enfant dedenz age.

102. Abusion est a receivre atorne ou nul poer nest donee a ceo fere par brief de la chauncellerie.

103. Abusion est a resceivre attorne ou la parole nest mie attame par presence des parties si noun en cas ou len fet attorne general.

104. Abusion est qe nul puisse fere attorne en personeles accions ou corporele peine est agardable.

105. Abusion est a resceivre excepcions en jugement si ele ne soit suffisaument pronuncie, car de orbe excepcion [3] sourt rerement cleer jugement.

106. Abusion est de allouuer garant vouchir en larcin ou en autre personele accion.

107. Abusion est qe juge assigne ne face monstraunce as parties pledauntes de son garant ou de son poer quant il le demanderent e nemie soulement la oye mes linspeccion.[4]

108. Abusion est qe justices e lur ministres qi occient la gent par faus jugement ne sunt destruz al foer dautres homicides. Que [5] fist le Roi Alfred prendre [6] xliiij. justices en un an taunt cum homicides pur lur faus jugemenz.

Il pendi Watling pur ceo qe il avoit juge Sidulf a la mort pur le recet de Edulf son fiz qi puis saquita del fet principal.

Il pendi Signer qi aveit jugie Ulf a la mort apres suffisante aquitaunce.

Il pendi Eadwine pur ceo qe il jugea Hathewi a la mort saunz lassent de tuz les jurours en cas il se estoit mis en la juree de xii homes, e pur ceo qe les troiz le voloient sauver

[1] Corr. *en*.
[2] Corr. *jetee*.
[3] *order de exception* (1642).
[4] Last four words omitted (1642).
[5] *Eue*, MS.
[6] Corr. *pendre*.

99. It is an abuse that false excuses are received by way of essoin, since law in no case allows a falsehood.

100. It is an abuse that an essoin should be allowed to a defendant in a personal action, for when he is mainprised the mainpernors become bound to produce him.

101. It is an abuse to receive an essoin cast by an infant under age.

102. It is an abuse to receive an attorney where there is not a *dedimus potestatem* from the chancery.

103. It is an abuse to receive an attorney where the suit has not been begun in the presence of the parties, except where an attorney general is appointed.

104. It is an abuse that anyone should make an attorney in a personal action in which a corporal punishment can be awarded.

105. It is an abuse to receive exceptions in court if they be not sufficiently defined, for from an obscure exception a clear judgment rarely arises.

106. It is an abuse to allow voucher to warranty in larceny or in any other personal action.

107. It is an abuse if a judge delegate does not show to the parties to the plea his warrant or commission when they ask for it, and he should allow them not only to hear but to inspect it.

108. It is an abuse that justices and their officers who slay folk by false judgments are not destroyed like other homicides. And King Alfred in one year had forty-four judges hanged as homicides for their false judgments.

He hanged Watling, for that he had judged Sidulf to death for receiving Edulf his son, who was afterwards acquitted of the principal crime.

He hanged Signer, who had judged Ulf to death after a sufficient acquittal.

He hanged Eadwine, for that he judged Hathewy to death without the assent of all the jurors when he had put himself upon a jury of twelve men; and because three against nine were for saving him, Eadwine removed those

countre le ix si remua Eadwyne les trois e mist autres trois es quex cest Hathewi ne se mist nient.

Il pendi Coel pur ceo qe il jugea Yve a la mort qe fu arragie.

Il pendi Malmere pur ceo qil jugea Prat a la mort par faus conoissaunce qil fit de felonie par desepar aunce.

Il pendi Athulf pur ceo qil fit pendre Copping avant lage de xxj. ans.

Il pendi Markes pur ceo qe il jugea Duning a la mort par xij. nient jurie.[1]

Il pendi Oscelin pur ceo qil jugea Seaman a la mort par vicious garant fondie sur fausse suggescion qi supposa celi Seaman estre en prison par le garaunt einz ces qe il i esteit.

Il pendi Billing pur ceo qil jugea Lefston a la mort par fraude en ceste manere. Il dit al poeple Seez tuz ius forqe cist qe occist le homme. E pur ceo qe Lefston ne sassist mie oveqe les autres, li comanda de mener[2] pendre, e dit qe assez le conust quant il ne sassist.

Il pendi Sefoul pur ceo qil jugea Ording a la mort cum non respondu.[3]

Il pendi Thurstone pur ceo qil jugea Thurgner a la mort par verdit denqueste prise doffice saunz sa mise.

Il pendi Athelstone pur ceo qe il jugea Herbert a la mort pur pecche nient mortiel.

Il pendi Rumbold pur ceo qe il jugea Lifchil a la mort en cas nient notoire saunz appel e saunz enditement.

Il pendi Rof pur ceo qil jugea Dunston a la mort pur eschap de prison.

Il pendi Freberne pur ceo qil jugea Harpin a la mort ou les jurours furent en dote de lur verdit. Car en doutes deit len einz ces sauver qe dampner.

Il pendi Sibright qi jugea Athelbrus a la mort pur qe il ne forni mie j. sien faus jugement[4] mortiel.

[1] *jurees* (1642). [2] *mesme* (1642) [3] Corr. *non defendu* (?).
[4] *il fauxa mie une si en faux judgment* (1642).

three and put in their stead other three, upon whom Hathewy had never put himself.

He hanged Coel for judging to death Yve, who was a lunatic.

He hanged Malmere for judging to death Prat, who, when desperate, had made a false confession of felony.

He hanged Athulf for hanging Copping, who was under the age of twenty-one years.

He hanged Markes, for that he judged Duning to death upon the verdict of twelve men who had not been sworn.

He hanged Oscelin, for that he judged Seaman to death under a vicious warrant founded on a false suggestion, which supposed that Seaman was in prison before that he really was so.

He hanged Billing, for that he judged Lefston to death by fraud in this manner. Billing said to the people, 'Sit down all of you who did not kill the man;' and then, because Lefston did not sit down with the rest, he commanded that he should be hanged, and said that he had made a sufficient confession by not sitting down.

He hanged Sefoul, for that he judged Ording to death for want of an answer.

He hanged Thurstan, for that he judged Thurgnor to death on a verdict taken *ex officio* on which Thurgnor had not put himself.

He hanged Athelstone, for that he judged Herbert to death for a sin that was not mortal.

He hanged Rumbold, for that he judged Lifchil to death in a case that was not notorious, without appeal or indictment.

He hanged Rof, for that he judged Dunston to death for escape from prison.

He hanged Freberne, for that he judged Harpin to death when the jurors were in doubt about their verdict, for in case of doubt one should rather save than condemn.

He hanged Sibright, for that he judged Athelbrus to death for that he would not execute one of his (Sibright's) false mortal judgments.

Il pendi Halo pur ceo qil sauva Tristran le viscounte a la mort qi avoit pris vins al oes le Roi desicom *par* entre prise de lautri contre son grie e robberie nad nul difference.

Il pendi Arnolt pur ceo qil sauva baillifs qi robberent la gent *par* colour de destreces. Dunt ascuns por les naams alienez e ascune pur extorsions de fins, desicom *par* entre extorsion de fin *pur* torcenous naam relesser e robberie nad nule difference.

Il pendi Erkenwold pur ceo qil pendi Franling pur nul autre desertz mes pur ceo q*e* il enseigna a celi qi il venqui *par* bataille mortele a dire le mot de cravent.

Il pendi Bermond pur ceo qil fust[1] coupir la teste Garbolt *par* son jugement en Engleterre pur tant qil fu utlaguie en Irelande.

Il pendi Alkemund pur ceo q*e* il sauva Cateman *par* colour de seisine[2] qi fu atteint de homsocne.

Il pendi Saxmund pur ceo qil pendi Berild en Engleterre ou li bref li Roi court pur fet qil fist en meme la terre ou li bref le Roi ne court nient.

Il pendi Alflet pur ceo qil jugea un clerk a la mort de qi il ne poent aver conussaunce.

Il pendi Piron qi avoit juge Hunting a la mort pur ceo qil fist fornir le jugement avant la q*uar*rantieme jour pendaunt lappel *par* bref de faus jugement devant le Roi.

Il pendi Dilling pur ceo q*e* il fist prendre Edous qi occist j. hom*me* *par* mescheaunce.

Il pendi Oswyn pur ceo q*e* il jugea Blithe a la mort de nuit.

Il pendi Osbert pur ceo qil jugea Fulcher a la mort hors de consistoire.[3]

Il pendi Vivelin pur ceo qil pendi Iselgrim *par* garant denditement nient especiall.

Il pendi Horn pur ceo qil pendi Suuein *par* jour defendu.

[1] Corr. *fist.* [2] *de disseisin* (1642).
[3] The old edition, by omitting some words, confuses Oswyn and Osbert.

He hanged Hale, for that he saved from death Tristram the sheriff, who had taken wine for the king's use, because between taking what is another's without his will and robbery there is no difference.

He hanged Arnolt, for that he saved bailiffs who robbed folk by colour of distress, some of them by alienating naams and others by extortion of fines, because between the extortion of a fine for the release of a naam and robbery there is no difference.

He hanged Erkenwold, for that he hanged Franling for no other cause than because he taught one whom he had vanquished in battle to say the word 'craven.'

He hanged Bemond, for that he had Garbolt's head cut off by a judgment given in England on an outlawry in Ireland.

He hanged Alkemund, for that he saved Cateman, who was attainted for hamsoken, by treating it as a mere case of disseisin.

He hanged Saxmund, for that he hanged Berild in England where the king's writ ran, for a deed done in a part of the same land in which the king's writ did not run.

He hanged Alflet, for that he adjudged to death a clerk over whom he could have no cognisance.

He hanged Piron, for that he judged Hunting to death, because he caused a judgment to be executed before the fortieth day, pending an appeal to the king by writ of false judgment.

He hanged Dilling for hanging Edous, who had slain a man by misadventure.

He hanged Oswyn, for that at night time he judged Blithe to death.

He hanged Osbert, for that when not in a consistory he judged Fulcher to death.

He hanged Vivelin, for that he hanged Iselgrim by warrant of an indictment that was too general.

He hanged Horn, for that on a prohibited day he hanged Swein.

Il pendi Bulmer pur ceo qil jugea Gerent a la mort par colour de larcin de chose qil avoit rescieu par title de bail.

Il pendi Thurbern pur ceo qil jugea Osgot a la mort pur fet dunt il estoit avant aquitie ver meme lactour, e la quele aquitaunce il tendi daverrer par jure, e pur ceo qil ne voloit averrer par record ne li voloit Thurbern allouer la quitaunce qil tendi.

Il pendi Wolston pur ceo qil avoit jugie Hubert a la mort a la sute le Roi pur fet qe Hubert conust e dunt li Roi li out pardonie sa sute, mes il nen out nule chartre, de quel pardoun neqedent il voucha le Roi a garaunt, e estre ceo le tendi de averrer par lenroullement de la chauncellerie.

Il pendi Osketil pur ceo qil jugea Culling a la mort par record de corouner ou replicacion allouable ne li tient lu. E fu li cas tiel. Culling fust pris e peine taunt qil conust daver pecchie mortelement, e pur estre quite de la peine. E Osketel le jugea a la mort pur sa confession qil avoit fet al corouner saunz trier la veritie de la peine e del fet.

E estre ceo furent penduz corouners, ministres, accessours, ceux qi penerent la gent e tuz ceux qi poient le faus jugement aver destorbe e ne les destorberent, en touz poinz ou les justices furent penduz. Car il pendi trestuz les juges qil poeit atteindre qi aveient faussement sauve homme coupable de la mort ou faussement pendu genz countre dreit, ou countre ascune renable excepcion.

Il pendi les sutiers Talebot pur ceo qe il aveient juge un homme a la mort en cas nient notoire, tut en fust il copable. Car tieux ne poeit nul juger el reaume forqe le Roi, ou ses commissaires forpris ceux seignurs en qi fieus les briefs le Roi ne courent nient.

Il pendi les sutiers de Dorcestre pur ceo qe il jugerent un homme a la mort par jurours de lur franchise pur felonie qil fist el forein, e dunt il ne poeient conustre pur la foreintie.

He hanged Bulmer, for that he judged Gerent to death for the larceny of a thing that he had received by bailment.

He hanged Thurbern, for that he judged Osgot to death for a deed of which he had already been acquitted as against the same plaintiff; and Osgot offered to aver the acquittal by a jury, and Thurbern would not receive the allegation of acquittal because Osgot did not offer to aver it by the record.

He hanged Wolfston, for that he judged Hubert to death at the king's suit for a deed which Hubert had confessed, whereas the king had pardoned his suit; but Hubert had no charter of pardon, but vouched the king to warranty, and in addition offered to aver the pardon by the enrolment in the chancery.

He hanged Osketil, for that he judged Culling to death on the record of the coroner, where an allowable replication was not allowed him. The case was this:—Culling was taken and tortured until he confessed a mortal sin, and this he did to be quit of further torture; and Osketel judged him to death on his confession made to the coroner, without trying the truth of the allegation as to the torture and the other facts.

And besides this, the coroners, officers, assessors, and those who tortured folk, and those who could have disturbed the false judgments but did not do so, were hanged whenever the justices were hanged, for King Alfred hanged all the judges whom he could attaint of having falsely saved a guilty man from death, or falsely hanged folk against law or in the teeth of a reasonable 'exception.'

He hanged the suitors of Talebot for judging a man to death in a case that was not notorious, though he was guilty; for in such cases no one in the realm can be judge save the king and his commissioners, except those lords into whose fees the king's writs do not run.

He hanged the suitors of Dorchester for judging a man to death on the verdict of jurors of their franchise for a felony committed outside the franchise, and of which they could take no cognisance because it was a 'foreign' plea.

Il pendi les sutiers de Cirencestre pur ceo qe il retindrent tant un home en prison qi se voilloit acquiter par foreins ou il dust aver pecchie felonessement tant qil morust en lur prison.

En son tens perdirent les sutiers de Anecastre lur jurediccion estre lautre peyne pur ceo qil tindrent ple defendu par les usages del Reaume as juges ordenaires sieutiers a tenir.

En son tens perdi Colgrim sa franchise de infangeneteof pur ceo qe il ne voloit mie envoier un larron a la commone gaole del countie qi fu pris dedenz sa franchise pur felonie fete dehors el gueldable.

En son tens perdi Botolf sa veuue de franc plege pur ceo qil chargea les jurours dautres articles qi napendirent a la veuue e amercia genz en personeles accions ou nul nest punissable par peine peccuniele.

E solom ceo qil fist rendre as criminals juges mortieux guerdons pur mortieux jugemenz torcenous, en meme la manere fist il rendre as torcenous juges venials prison pur torcenous enprisonment e tieux pur teus oveqes les autres peines. Car il livera Thedwad a la prison pur ceo qe il jugea Touz[1] a la prison pur pecchie nient mortel. Il jugea Cantuard a la prison pur ceo qe il enprisona Old pur la dette le Roi.

Il livera Sithing a la prison pur ceo qe il enprisona Herbold pur le pecchie sa femne.

Dautre pard fist il couper le poin Harulf pur ceo qe il sauva Aruccok le poin qe fu atteint devant li qil avoit felonessement coupe le poin Richolde.

Dautre part il jugea Edulf de estre plaiez pur ceo qe il navoit mie jugie Arwold a plaier qi fu atteint devant li qe il avoit felonessement plaie Aldous ne congie ne prist dacorder.

En meindres pecchiez ne fist il mie del tut si tieux[2] jugemenz, einz desherita ses justices e les anienti solom les poinz de ces estatuz en tuz poinz ou il les poieit atteindre

[1] Perhaps not a proper name.
[2] *ne fist il my del tort cy tiels* (1642).

He hanged the suitors of Cirencester for keeping a man in prison until he died in their prison, when that man was willing to acquit himself by a jury of 'foreigners' from the place where, as was alleged, he had sinned feloniously.

In his time the suitors of Ancaster lost their jurisdiction, besides suffering other punishment, because they held a plea which, by the usages of the realm, it was not law for suitors as judges ordinary to hold.

In his time Colgrim lost his franchise of infangenetheof because he would not send to the common gaol of the county a thief caught within his franchise for a felony committed outside in the geldable.

In his day Botolf lost his view of frankpledge, because he charged the jurors with articles that did not belong to the view, and amerced folk in personal actions in which no pecuniary punishments should be inflicted.

And as he rendered mortal rewards to criminal judges for their wrongful mortal judgments, so in the same manner for wrongful venial judgments he rendered imprisonment for wrongful imprisonment, and like for like as regards other punishments; for he delivered Thedwad to prison because he adjudged [men] to prison for sins that were not mortal, and he delivered Cantward to prison because he imprisoned Old for a debt owed to the king.

He delivered Sithing to prison because he imprisoned Herbold for the sin of his wife.

And again, he had Harulf's hand cut off because he saved the hand of Aruccok, who was attainted before him of having feloniously cut off the hand of Richold.

And so he adjudged that Edulf should be wounded for not having adjudged to wounding Arwold, who was attainted before him for having feloniously wounded Aldous, whereas no licence for an accord had been obtained.

In the case of smaller sins he did not pass such severe judgments,[1] but disinherited his justices and deposed them, according to the articles of his statutes, whenever he could

[1] Text obscure.

qil avoient passie les poinz ou les metes de lur delegacie ou de lur commission ou aveient fet reles de fin ou damerciement ou dautre chose qe appendi au Roi, ou aveient relessie peine ou encrue outre le dreit, ou procurie dencrestre, ou plede saunz garaunt, ou en la propriete par garant de bref ou de pleinte de la possession, ou le revers, ou en la veniale accion par motz de felonie ou le revers, ou aveient vee a nule partie transcrit de son ple a la jornee, ou ascun des parties torcenousement delaie, grevee ou autre tort fet en desallouance de renable excepcion de partes ou de jugement.

En son tens poet chescun pleintif aver commission e brief a son viscounte al seignur del fieu ou a certein justice assignee sur chescun tort. En son tens se hasta dreit de jour en jour issi qe outre xv. jours nestoit nule defaute ne nul essoine ajornable. En soun tens poieient les parties emporter les partes de lur plez les seals les juges ou des parties adverses. En son tens nestoit nul brief de grace einz furent touz brefs remediaux grantables com de dette[1] par vertu de serement. En son tens soloient les juges prendre de chescun actour xii. d. a la jornee. En son tens recovererent pleintifs ne mie soulement damages des issues des possessions e des fieus einz recovererent custages, travax, blemissemenz[2] de fames e quant qe len poet loialment taxer qe len estoit meins puissant par lencheson de tiel fet.

109. Abusion est qe lem soeffre qe tant de multitude des clers sunt sufferz destre ordenez, par quoi la juresdiccion le Roi est descruz.

110. Abusion est qe clers qe nunt[3] lesse ceo qe al secle appent tienent lais fieus.

111. Abusion est qe len tent plez par dimenches ou par autres jours defenduz ou devant le soleil levie ou nutantre ou en deshonest lu.

112. Abusion est qe nul respoigne de felonie ou dautre personel trespas infamatoire avant son eage de xxi. an.

[1] Corr. *droit* (?).
[2] *custages quant aux blemishments* (1642).
[3] Corr. *unt*.

attaint them of having exceeded the articles or limits of their delegation or commission, or of having released any fine, amercement, or other matter that belonged to the king, or of having released or increased any punishment contrary to law or procured any such increase, or of having entertained pleas without warrant, or proprietary actions when they only had a warrant for possessory writs and plaints, or *vice versa*, or of having allowed words of felony in venial actions, or *vice versa*, or of having denied to either party a transcript of his plea on the day [on which it was pleaded], or of having delayed or aggrieved either party, or of having done any other wrong by disallowing any reasonable exception against the parties or the judgment.

In his time everyone could have for every wrong a commission and writ to the sheriff, or to the lord of the fee, or to some certain judge delegate. In his time right was speeded from day to day, so that no default or essoin was adjourned for more than fifteen days. In his time the parties could carry off with them the copies of their pleadings [under] the seals of the judges or of the adverse parties. In his time no writ was of grace, but all remedial writs were grantable as of right by virtue of [the chancellor's] oath. In his time all the judges used to take twelve pence from every plaintiff for each day's session. In his time plaintiffs recovered by way of damages, not only the issues of the possessions and fees [that were in dispute], but also costs and charges and compensation for the blemish to their good names and all that could be lawfully taxed to them as loss incurred by reason of the act in question.

109. It is an abuse that so many clerks are suffered to be ordained that the king's jurisdiction is diminished.

110. It is an abuse that clerks, who have given up all that belongs to this world, hold lay fee.

111. It is an abuse to hold pleas on Sundays or other forbidden days, or before sunrise, or by night, or in improper places.

112. It is an abuse that anyone should have to answer for felony or other infamatory personal trespass before the age of twenty-one years.

112 [A].[1] Abusion est q*e* nul respoigne taunt cu*m* il est en p*r*ison si sur soun prou noun einz ces[2] q*e* il soit quite del fet pur qi il est en p*r*ison.

113. Abusion est q*uant* accion affirmative est encountre de respons ou de excepcion affirmative aprendre la p*roeve* de la p*ri*mer affirmative forpris en favour de sauvacion.

114. Abusion est q*e* hom*me* soit encoupie sur vie e menbre ausicom doffice saunz sute e sanz enditement.

115. Abusion est q*e* justice ne monstre lenditement as enditez sil le demaundent.

116. Abusion est q*e* hom*me* respoigne en Engle*terre* pur chose fete hors del reaume ou le rev*ers*, ou en lu p*ri*vilege ou li brief li Roi ne court nient pur chose fete el forein ou le rev*ers*, nen lu enfraunchi de fet el gueldable ou le rev*ers*.

117. Abusion est q*e* rap est pecche mortel.

118. Abusion est q*e* rap se estent a autre fe*m*me q*e* a pucele.

119. Abusion est de utlaguer hom*me* si no*n* pur felonie.

120. Abusion est q*e* lem p*rei*gne en Engleterre hom*me* utlague en Irlaunde ou aillurs hors del reaume ou len est oustie de son fieu p*ar* droit jugement des juges ordenaires sutiers.

121. Abusion est q*e* acontie*r* de si long tens dunt nul nel poent testmoigner de veuue e de oie, q*e* ne dure mie gen*er*alment outre xl. anz.

122. Abusion est q*e* len eit p*er*sonel accion de pluz loinz q*e* de la derreine heire.

123. Abusion est del brief de acounte de monst*ra*vit par le quel chescun poet fere enp*ri*soner autre torcenouement.

[1] In the old edition this abuse is fused with the last preceding abuse by an omission of words. [2] Corr. *ceo*.

112 [A]. It is an abuse that anyone should be put to answer while he is in prison, unless this be for his advantage, until he is acquitted of the deed for which he is in prison.

113. It is an abuse that when an affirmative action is met by an affirmative answer or exception, the proof of the first [the plaintiff's] affirmative is received, unless this be done in favour of salvation.

114. It is an abuse that a man is accused of matters touching life or limb *quasi ex officio* without suit and without indictment.

115. It is an abuse if a justice will not show the indictment to the indicted if they demand it.

116. It is an abuse if one be put to answer in England for a deed done out of the realm, or *vice versa*, or to answer in a privileged place where the king's writ does not run for a thing done outside, and *vice versa*, or to answer in a franchise for a thing done in the geldable, or *vice versa*.

117. It is an abuse that rape is a mortal sin.

118. It is an abuse that rape is extended to women who are no maids.

119. It is an abuse to outlaw a man if it be not for felony.

120. It is an abuse to arrest in England one outlawed in Ireland or elsewhere outside the realm, whereby he is ousted of his fee of having[1] the right judgment of the suitors who are his judges ordinary.

121. It is an abuse to plead about a time so remote that no testimony of sight and hearing can be given about it, and as a general rule such testimony cannot be had after forty years.

122. It is an abuse to found a personal action on what happened before the last eyre.

123. It is an abuse of the writ of account [*Monstravit de compoto*] to enable a man to wrongfully imprison another.

[1] Translation doubtful.

124. Abusion est qe len est tenu a rendre aconte des issues de terre dunt len est gardein par title de lei.

125. Abusion est qe le bref de ne vexes va issi en declin.

126. Abusion est qe batailles ne se funt en personeles actions aussi ben com en felonies.

127. Abusion est qe proeves e purgations ne se funt par la miracle dieu en cas ou dautre proeve ne vaut.

128. Abusion est a joindre bataille par entre persones nient recevables a bataille.

129. Abusion est qe chevaler soit autrement armie qe autre homme pur cumbatre.

130. Abusion est qe juge se conoisse par bref original en garauntz par voucher ou en autres as queus sa juresdiccion ne sestent.

131. Abusion est a soffrer voucher a garaunt as accions le Roi de quo waranto.

132. Abusion est qe ceux qe sen[1] troeve usuriers par enditemenz apres lur morz sunt suffertz destre sevely en seintuaire e qe lur fieus ne remeignent eschaetes as seignurs des fieus.

133. Abusion est qe viciouses obligacions chacent lur actours a respons damaious[2] desi qe eles sunt voidables.

134. Abusion est a chacer jurours tesmoins a dire chose qil ne sevent par destresce de feim e dempr*i*sonment apres lur verdit qe il nen sievent rien.

135. Abusion est de user le mot de lur escient en seremenz pur fere les jurors pronuncier sur lur queder, desicom la principale parole de lur serement est qil voir dirrent.

136. Abusion est qe len nexamine les jurours taunt qe len en troeve al meinz ij. acordaunz.

137. Abusion est a mettre plus des paroles en homages fere forqe taunt jeo devieng vostre homme del fieu qe jeo cleim tenir de vous.

[1] Corr. *len.* [2] *a personalls dammages* (1642).

124. It is an abuse that any should be bound to render account of the profits of land whereof he is guardian by lawful title.

125. It is an abuse that the writ *Ne vexes* is thus falling into decline.

126. It is an abuse that there is no trial by battle in personal actions as there is in case of felony.

127. It is an abuse that proofs and purgations are not made by the miracle of God when no other proof can be had.

128. It is an abuse to decree battle between persons who cannot be received to fight.

129. It is an abuse that in a judicial battle a knight should have arms different from those which another man has.

130. It is an abuse that a judge by virtue of an original writ should take cognisance of warranties by voucher or other matters to which his jurisdiction does not extend.

131. It is an abuse to suffer a voucher to warranty in an action of *Quo waranto* by the king.

132. It is an abuse that those who are found by indictment to be usurers are after their deaths suffered to be buried in holy ground, and that their fees do not remain escheated to the lords of the fees.

133. It is an abuse that vicious obligations compel those who made them to a damaging answer, whereas they are voidable.

134. It is an abuse to force jurors or witnesses to say what they do not know by distress of hunger and imprisonment, when their verdict is that they know nothing.

135. It is an abuse to insert in oaths the phrase 'to the best of their knowledge,' so as to compel jurors to say what they opine, whereas the principal words in their oath are to the effect that they will say the truth.

136. It is an abuse not to examine the jurors until one finds at least two of them in agreement.

137. It is an abuse to put into the words of homage anything beyond 'I become your man of the fee that I claim to hold of you.'

138. Abusion est de rendre ou de apeseer par attornie.

139. Abusion est dassigner justices en tieu parties sanz bref en [1] la presence le Roi si non par lassent des parties.

140. Abusion est des briefs de audita querela e de conspiratis e dautres qe ne contenent nient les substances des pleintes.

141. Abusion est qe les justices del banc sentremettent des plus dès pleez qi tort fet contres fins, de grant assises, de translacions de plez hors de meindre courtz e de drein presenz e de fieus e les dreiz le Roi e la Reine alliez.[2]

142. Abusion est duser poneet [3] einz ces [4] qe lur causes soient discusses si les parties les chalengent, car mentour purchaceour ne deit aver benefice de sa menceonge.

143. Abusion est sure grant destresces en plez dathachemenz dunt les defautes sunt profit au Roi e nient as pleintifs.

144. Abusion est [5] trespassours qe rien ne unt ne sunt baniz de villes, de contiex, de fieus e de hundrez sicom estre soloient.

145. Abusion est a crere qe petiz capez facent autre title forqe sauve chescun droit en reales accions nen autres.

146. Abusion est les issues des grantz destresces de mixtes accions ne devenent as proffiz des seignurs des fieus e dautres qi unt court sicom sunt al Roi des plez meuz en sa court sur memes les accions.

147. Abusion est a quider qe autele peine fet agardee as meinpernours cum as principax qi funt defaute ou qe il ne sunt forqe amerciables en cas.

148. Abusion est damercier homme enpledie de fieu ou

[1] Corr. *ou* (?). [2] Corr. *alienez*. [3] Corr. *Pone*.
[4] Corr. *ceo*. [5] Supply *qe*.

138. It is an abuse to suffer an attorney to surrender [the land in demand] or compromise the action.

139. It is an abuse to assign justices [to hear pleas] between such and such parties, save by writ or in the king's presence, unless this be done by the assent of the parties.[1]

140. It is an abuse to issue writs of *Audita querela*, of *Conspiracy*, and so forth, which do not contain the substance of the complaints.

141. It is an abuse that the justices of the Bench meddle with other pleas than such as relate to the infraction of fines, grand assizes, pleas translated from minor courts, darrein presentments, or the alienation of the fees and rights of the king and queen.

142. It is an abuse to use a *Pone* before the cause has been discussed, in case the parties challenge the writ; for the lying purchaser [of the writ] should take no benefit by his lie.

143. It is an abuse to sue out a grand distress in pleas begun by attachments, whereby the king, not the plaintiff, gets the profit.

144. It is an abuse that trespassers who have no property are not banished, as they used to be, from vills, counties, fees, and hundreds.

145. It is an abuse to hold that either in a real action or in another a *petty cape* can give any title other than *salvo iure cuiuslibet*.

146. It is an abuse that the issues of grand distresses in mixed actions do not come to the profits of the lords of the fees and others who have courts, just as they come to the king when similar actions are begun in his court.

147. It is an abuse to suppose that the same punishment should be awarded to mainpernors as to the principals who make default, for in some cases the former should only be amerced.

148. It is an abuse to amerce a man who is impleaded for

[1] Translation doubtful.

de service issant de fieu pur defaute en personele accion ou reale. Car utlaguerie ou perte del fieu suffist pur peine.

149. Abusion est qe viscountes ne funt point dexecucion as briefs viscontals einz ces [1] qe les pleintifs eient trovez pleges de sure, ou nule mencion ne se fet de sieurtie prendre.

150. Abusion est a destreindre pur arrerages de service issant de fieu par biens moebles, ou nule destresce ne se dust fere forqe par le fieu.

151. Abusion est qe tenaunt pusse sanz peine feffer la tierce persone el fieu son seignur en prejudice de li ou autre chose fere ou dire contre les poinz de son serement de feautie.

152. Abusion est a soffrir champion louuiz estre recevable en testmoinage.

153. Abusion est qe nul ne ad recoverer del tort le Roi ou de la Roine si non a la voluntie le Roi.

154. Abusion est a juger homme a divers peines pur un trespas sicom a corporele peine e a ranceon, desicom ranceon nest forqe redempcion de peine corporele par fin de deners.

155. Abusion est qe genz defamees par pecchie ne sunt rebotes de seremenz fere e de dignitiez e dautres honurs. E autres abusions perent par lus qi bien entent la livre avant escritz.

[*Ch. II.*] *Des Articles* [*de la Grande Chartre*].

Cum la lei de ceste reaume fondee sur xl poinz de la grande chartre des fraunchises soit desuse dampnablement par les guiours de la lei e par estatuz pus fetez contraianz a ascuns de ces poinz, pur monstrer les defautes des poinz avantditz e les errours dascuns estatuz ai jeo mis en memorial cest chapitre des defautes e reprehension des estatuz ; e primes des defautes des poinz de la chartre.

[1] Corr. *ceo.*

a fee or the service issuing from a fee for default in a personal or real action, for outlawry or loss of the fee is punishment enough.

149. It is an abuse that sheriffs will not execute vicontiel writs until the plaintiffs have found pledges to prosecute, where no mention of taking surety is made in the writ.

150. It is an abuse to distrain by movable goods for arrears of service issuing from a fee, whereas no distress should be made save by the fee.

151. It is an abuse that a tenant can without punishment enfeoff a third person in the fee of his lord to his lord's prejudice, or do or say any other thing against the terms of his oath of fealty.

152. It is an abuse to suffer a hired champion to be received as a witness.

153. It is an abuse that one has no recovery against the king or queen for a tort save at the king's will.

154. It is an abuse to adjudge a man to several punishments for one trespass, *e.g.* to both corporal punishment and ransom, for ransom is but a redemption of a corporal punishment by a money fine.

155. It is an abuse that men made infamous by sin are not rejected from taking oaths and from dignities and other honours. And other abuses there are which will appear from place to place to one who reads the foregoing books.

[*Ch. II. Of the Great Charter.*]

Whereas the law of this realm founded upon the forty articles of the Great Charter of Liberties is damnably disregarded by the governors of the law and by subsequent statutes, which are contrary to some of these articles, therefore to demonstrate the defects of these articles and the errors of certain statutes I have put on record this chapter concerning the defects and reprehensions of statutes. And first of the defects in the articles of the Charter:[1]—

[1] In the margin we give references to the various chapters in the Charter of 1225 upon which our author comments.

Al point qe leglise dengleterre eit ces[1] dreiz entiers e ces[1] fraunchises desblemies serreit peine neccessaire a ordener corporele, e nomement as lais juges, ministres le Roi e autres qi jugent clers en mortels crims e as corporeles peines infamatoires, e detienent lur biens apres lur purgacion, e as ceux seculers juges qe se medlent a conoistre en matrimoigne ou testament ou dautre espiritualitie.

Pur lautre point proschein est chescun franc homme del reaume enheritie des franchises de la chartre, e dunt chescun est disseisi com de soun franc tenement qi nen est jugie solom les poinz suanz, e tient lu recoverer damages par lassise de novelle disseisine.

Li tierz point semble defectif, car aussi com le relief de countie enterre fet a decrestre en la persone celi qi meins en tient, aussi semble qe tel certein fet a encrestre en taunt com countie plus en tient, issi qe tendra ij. contees. E qi tendra countie e baronie paie a foer de contie e estre ceo a foer de baron. E issi dautres fieus si expres ne soit a la chartre qe la fin de cent livres ne soit point encrue pur nul encrees de plus de fieu e issi des autres certeins.

Li quart point est defectif, car tut soit qe cel point soit fondie sur dreit pur lier les seignurs des fieus as garanties par lapprise de tieux homages le quel qe il les prissent des droiz heirs ou non, pur ceo nest mie expres qi devient estre gardeinz des fieus vacanz e avoir les issues el moien tens en cas ou les dreiz heirs defoient[2] lur seignurs ou ne poent ou ne vollent lur homage fere.

Li point des gardes est defectif en taunt qe nule difference nest expresse par entre les heirs madles e les heirs femeles. Car feme ad son plener eage quant ele est pleinement de xiiij. anez e les vij. outre ne furent primes ordene forqe

[1] Corr. *ses*. [2] *defuont* (1642).

As to the article 'Quod ecclesia Anglicana . . . habeat omnia iura sua integra et libertates suas illaesas,' some corporal punishment should be ordained, and in particular for the lay judges, royal ministers, and others who judge clerks for mortal crimes and to infamatory corporal punishments, and detain their goods after their purgation, and for those secular judges who meddle in the cognisance of matrimony or testament or other spiritual matters. c. 1

By the next article every free man of the realm is heritably entitled to the franchises of the charter, and therefore everyone is disseised of his free tenement who is not judged according to the following articles, and in such a case he ought to recover damages by an assize of novel disseisin.[1] c. 1

The third article is defective, for as the relief due for a whole county is to be decreased in the case of one who holds less, so seemingly this certain sum should be increased when an earl holds more than one county, *e.g.* two counties. And he who holds a county and a barony should pay as for a county and also as for a barony. And so in the case of other fees, if it be not expressed in the charter that the fixed sum of £100 is not to be increased by reason of any increase of the fees; and so with the other fixed sums. c. 2

The fourth article is defective, for albeit it is founded upon law that the lords of the fees may be bound to warranty by the receipt of such homages, whether they receive them from the right heirs or no, still it is not expressed that they ought to have the wardship of vacant fees and take the issues during the mean time in case the right heirs defy their lords or cannot or will not do homage. c. 3

The article about wardship is defective, since no difference is expressed between heirs male and heirs female; for a woman attains full age on accomplishing fourteen years, and the seven remaining years were ordained in the cc. 3, 4

[1] Every breach of the charter by the king should give an assize of novel disseisin to the party grieved.

pur les madles heirs, qi avant lage de xxj. ans ne furent mie suffisanz as armes porter pur le defens del reaume. E notez qe chescun gardein est charge de tierz choses, lune de sustenir lenfant soffisaument, lautre a sustenir ces[1] dreiz e son heritage sanz gast, la tierce de respondre e a la satisfaccion des trespas de tieux enfaunz.

La defaute del point des desparagacions piert par entre les estatuz de Mertone, e la defaute des francs bancs e veudves en meme la manere. En quel point est assez expres qe nule femme nest doable si ele neit este solempnement esposee al hus de moustier e illoec doee.

Li point qe comande qe la citee de Londres eit ces[1] aunciens franchises e ces[1] franchises custumes est interpretable en ceste manere qe les citizeins eient lur franchises dunt il sont enheritez par loial title des douns e confermemenz des Rois e les queles il ne unt forfetes par nule abusion, e qe il eient lur franchises custumes qe sunt soffrables par dreit e nient repugnanz a lei. El interpreteison qest dite de Londres soit entendue de .v. porz e dautres lus.

Li point qe defent torcenouses destresces des fieus est covenable en sei, mes il nest guers homme el reaume qi tenaunz eit qil ne trespase en cest point par li ou par ces[1] ministres sicom piert el chapitre de naiftie al parogref de villeins.

Li point qe defent qe comuns plez ne suent la court des Rois est interpretable en ceste manere, qe gentz ne travaillent mie a sure lostiel le Roi en lointeins pais sicom fere soloient, einz voet cest point qe pleintifs eient commissions as viscontes, as seignurs des fieus ou as justices assignes issi qe dreit soit fet as parties en lus certeins ou les parties e jurours soient meins travaillez.

[1] Corr. *ses*.

first instance only for male heirs, who until they are of the age of twenty-one years are not able to bear arms for the defence of the realm. And note that every guardian is charged with three duties: to sufficiently maintain the child; to maintain its rights and inheritance without waste; thirdly, to answer for the satisfaction of its trespasses.

The defect in the article about disparagement will c. 6
appear below when we deal with the Statute of Merton; so
also the defect in the article about freebench and widows. c. 7
In that article it is sufficiently expressed that no woman is dowable if she be not solemnly espoused at the church door and endowed there.

The article which commands that the city of London c. 9
shall have its ancient and accustomed liberties is to be understood thus: that the citizens shall have their franchises, to which they are heritably entitled by the gifts and confirmations of the kings, and which they have not forfeited by any abuse, and that they shall have such of their free customs as are allowable by right and not repugnant to the law.[1] And the interpretation applicable to the case of London is applicable also to the case of the Cinque Ports and other places.

The article which forbids wrongful distraint of fees is c. 10
proper as it stands, but there is hardly a man in the realm who has tenants and who does not trespass against it by himself or his ministers, as appears in the chapter on Naifty in the paragraph about villains.[2]

The article which forbids that common pleas shall follow c. 11
the king's court, is to be interpreted thus: that men are not to toil to follow the king's household into distant parts, as they formerly did, but this article wills that plaintiffs shall have commissions to the sheriffs, or the lords of the fees, or to justices assigned, so that right shall be done to the parties *in locis certis* so that the parties and the jurors may not have so much toil.

[1] This hardly comes from a strong champion of civic customs.

[2] See above, p. 79. Almost every landlord is unlawfully oppressing his villains.

Tut soit qe le point qe comande qe petites assises soient prises en lur countiez estoit fundie sur laisement des jurours, uncore est il desusie en taunt qe les justices funt les jurours travailler es plus foreins marchies des contiez, ou mieux vaudreit qe justices travaillassent de hundred en hundred qe de travailler taunt de poeple.

Li point des amerciemenz est desusie par justices, viscountes, baillifs, seneschauz e autres qi amercient la gent en certein a lur voluntie en ceste manere, metez tiel a taunt pur despit ou pur trespas, sanz peser le trespas e sanz affoerement de genz a ceo jurees e saunz especefier la manere e la qualite del despit. Dautrepart ou les affoerours duissent estre esluz par lassent des amerciez e en lu comun, la funt tieux sovereins venir a lur oustieux affoerours cum eus memes volent [1] mettre e funt acrestre e amenuser les amerciemenz a lur voluntie.

Li point qe defent qe rivers ne soient mises en defens est desusie, car plusours rivers sont ore appropris e engarnes e mises issi en defens qe soloient estre comuns a pescher e user el tens le Roi Henri le premer.

Li [2] qe defent qe viscountes, chasteleins, corouners ne baillifs ne tenent les plez de la coroune ne semble mie necessaire, car apeax de felonie sont par droite naturele [3] attamables devaunt corouners e les exigendes continuables e les jugemenz des utlaguaries pronunciables, e pur ceo averoit cel point mestier de plus de letre si qe sa entencion fut expresse.

Par la fin del point des biens moebles as morz piert qe accion accrest as vedves e as enfanz des morz a demander lur renables parties des chatieux lur piere esloignez.

Ceo qest defendu a conestables a prendre lautri defend droit a tote gent de si qe nule difference nest par entre prise de lautri maugrie soen e robberie, li quel qi cele prise soit

[1] Apparently *inolent*, MS. [2] Supply *point*.
[3] *drcit nient* (1642).

Albeit the article which commands that petty assizes be taken in their own counties was made for the easement of jurors, none the less it is disregarded, for the justices cause the jurors to journey to the extreme boundaries of the counties, whereas it would be better that the justices should journey from hundred to hundred and not labour so many folk. c. 12

The article about amercements is disused by justices, sheriffs, bailiffs, stewards, and others, who amerce men at fixed sums according to their will and pleasure, saying, 'Put down so and so for so much, for a contempt, or for a trespass,' without weighing the trespass and without any affeerment by men sworn for the purpose, and without specifying the manner or quality of the contempt. And again, though the affeerors ought to be chosen with the assent of those who are amerced and in a public place, these magnates cause to come to their own houses such affeerors as they please and increase and decrease the amercements at pleasure. c. 14

The article against putting rivers in defence is disused, for divers rivers are now appropriated and warrened and put in defence which were open for fishing and using in the time of King Henry I.[1] c. 16

The article which forbids sheriffs, castellans, coroners, and bailiffs to hold pleas of the crown seems unnecessary, for by natural law appeals of felony ought to be commenced before the coroners, and the process of exigend should go on before them and outlawries ought to be pronounced by them; thus there should be more words in this article to express its intention. c. 17

By the last words of the article about the movable goods of dead men, it appears that an action *de rationabili parte bonorum* should accrue to the widow and children if the goods of the father be eloigned from them. c. 18

As to the ordinance that constables are not to take what belongs to others, this is a rule of right which extends to all mankind, for there is no difference between taking what is another's against his will and robbery, whether the cc. 19, 20

[1] But it is the time of Henry II. that is mentioned in the Charter.

de chevauz, de vitaille, de marchandie, de cariage, de oustieux, ou dautre manere des biens.

Li point des terres as felons tenir par un an est desusie, car par la ou li Roi nen dust aver qe le gast de droit, ou lan el non de fin pur sauver le fieu de lestrep, prenent les ministres le Roi andeus.

De defens del precipe nest point tenu einz se funt tant des briefs de possession de fourme e par estatuz chescun jour qe les seignurs perdent lur conoissances de lur fieus e les avantages de lur courz.

Li point qe comaunde qe une mesure soit par mi tut le reaume e une manere de pois ceo [1] desuse par marchanz e burgois usanz dantiquite la livre del pois de xx. s. de dreite assise ; e aussi dalnes e dautres mesures.

De defens qe se fet del brief de odio e atia qe le Roi ne son chauncelle*r* ne preignent pur le bref granter se dust estendre a touz briefs remediaux. E li dist brief ne se dust mie soulement estendre as felonies de homicide einz ceo dust estendre as totes felonies e ne mie soullement en appeax mes en enditemenz.

Li point qe defent qe nul baillif ne mette franc home a serement saunz sieute presente est interpretable en ceste manere, qe nul justice, nul ministre le Roi, ne autri seneschal ne baillif neit poer a mettre franc homme a serement fere saunz le comaundement le Roi, ne pleinte receive saunz tesmoins presenz qi testmoignent la monstraunce estre verrie.

Li point qe li Roi grante qil ne disseisera nul homme ne nemprisonera ne destruira forqe par loial jugement destrut lestatut des marchandes e autres estatuz, e est interpretable en ceste manere, nul ne soit pris, sest [2] a dire si non

[1] *est* (1642). [2] Corr. *cest*.

taking be of horses, of victual, of merchandise, of carriage, of lodgings, or of any other kind of goods.[1]

The article about the year and day of a felon's land is disused; for whereas the king ought only by rights to have either 'the waste' or else 'the year' by way of a fine to save the fee from being wasted, the king's ministers now claim both the year and the waste.[2] c. 22

The prohibition of the *breve quod vocatur Praecipe* is disregarded, for every day so many writs which are possessory in form are issued, and this too by statute, that the lords lose the cognisance of matters concerning their fees and the profits of their courts.[3] c. 24

The article which commands that there be one measure throughout the realm and one weight is disregarded by merchants and burgesses, who by ancient custom make use of the pound of twenty shillings of right assize [?] And so as to ells and other measures. c. 25

As to the clause forbidding the king and his chancellor to take anything for granting the writ *de odio et atia*, this ought to be extended to all remedial writs; and the said writ ought to be extended, not only to the felony of homicide, but to all felonies, and not only to appeals, but also to indictments. c. 26

The article which forbids a bailiff to put a free man to his oath without producing suit should be interpreted in this manner: that no justice or minister of the king or other steward or bailiff has power to put a free man to his oath without a command from the king, and that no plaint is to be received unless there be witnesses present who testify to the truth of the count. c. 28

The article whereby the king grants that he will not disseise, nor imprison, nor destroy any man *nisi per legale iudicium*, renders invalid the statute *de Mercatoribus*[4] and other statutes, and should be thus interpreted: c. 29

[1] There should be no need to restrain 'purveyance,' for purveyance is robbery.

[2] The Charter says nothing about the waste.

[3] This is very true. Our author is in favour of seignorial justice.

[4] Stat. 11 Edw. I. de Mercatoribus; 13 Edw. I. (Acton Burnell).

par garant fondie sur personele accion. Distinctez, car si laccion soit veniale nul enprisonement ne iest avoable si non pur defaute de meinpernours, e issi piert qe nul nest enprisonable pur dette. E si ascun estatut soit fet repugnaunt a cest point, ou pur la dette le Roi ou pur lautri, ne fet point a tenir. Nul ne soit utlaguie, fet a entendre si noun pur mortele felonie dunt len est mescru par serement de vesins a ceo jurez aussi com doffice al foer qe len use en eires. E par ceo se destrut en lestatut de utlaguer homme pur arrerages dacontes e de tuz autres tieux estatuz. E ceo qest dit nul ne soit exulle ne destrut, est interpretable en cest entendement, qe len eit accion dappeller touz juges e tuz sutiers, tous assessours e touz fornissours qi destruent homme contre le dreit cours e les dreites riules de lei. Dautrepart ceo qe le Roi defent qe nul ne soit deseisi de son franc tenement, de ces [1] franchises ou de ces [1] fraunches custumes, est issi a entendre, qe len recoevre par lassise de novelle disseisine tut manere de franc tenement e tote manere de possession reale de fieu ou de fraunchises dunt len est engite si par loiall jugement non. E cest mot si non par loial jugement fert a totes les paroles de cest estatut.

Cest point qe li Roi grante a soun poeple qil ne vendera dreit noiera [2] ne delaiera est desusie par le chaunceller qi vent les briefs remediaux e les apele briefs de grace, e li chaunceller del eschecker qi vee aquitance souz la verte cire des paiemenz fez al Roi, e tuz ceus qi delaient dreit jugement ou autre dreit.

Li point del congie de la demoere des marchaunz aliens est issi entendable, qe ceo ne soit en prejudice des villes ne des marchaunz d'Engleterre, e qil soient serementes al Roi e pleviz sil demoerent plus de xl. jours.

[1] Corr. *ses.* [2] Corr. *ne veera* (?).

Nullus capiatur, none is to be taken unless it be by warrant founded on a personal action. (Here we must distinguish, for if the action is venial, no imprisonment is justifiable save for default of mainpernors, and so it appears that none can be imprisoned for debt, and if any statute be made repugnant to this article, whether it concern debts due to the king or debts due to others, it is not to be obeyed.) *Nullus utlagetur*—here one must understand 'unless it be for mortal felony whereof one is found suspected by the oaths of one's neighbours who are sworn *quasi ex officio* in the manner customary in eyres.' And this clause annuls the statute which outlaws a man for arrears on an account, and other similar statutes.[1] *Nullus exuletur aut destruatur* —this is to be interpreted thus: that one has an action to appeal all judges, all suitors, all assessors, all executants of judgments who destroy a man against the right course and the right rules of law. And then as to the king's prohibition, *Nullus disseisietur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis*—this is to be understood thus: that one can recover by an assize of novel disseisin every manner of free tenement and every manner of 'real' possession of a fee or of franchises wherefrom one is ejected otherwise than by lawful judgment. And this clause *nisi per legale iudicium* has reference to all the clauses of this article.

The article whereby the king grants to his people that c. 29
he will not sell, nor deny, nor delay justice, is disregarded by the chancellor who sells remedial writs and calls them writs of grace, and by the chancellor of the exchequer who refuses to give acquittances under green wax for payments made to the king, and by all those who delay right judgment or other right.

The article about the residence of alien merchants is to c. 30
be so understood that this residence is not to be prejudicial to the towns nor to the merchants of England, and so that the alien merchants are to be sworn to the king and pledged if they stay beyond forty days.[2]

[1] Stat. West. I. c. 11. [2] The Charter says nothing of the forty days.

Li point qe defent qe nul naliene sa terre en prejudice des seignur del fieu est interpretable en ceste manere, qe nul tenant nalliene le fieu son seignur saunz son assent ou a tenir en chief del seignur saunz encrees de novel service.

Li [1] point des gardes de abbies e des lus religious vacanz fet issi a entendre qe chescun seignur eit la garde de son fieu durant la vacacion.

Li point qe nul ne soit pris nenprisone par appel de femme dautre mort qe de la mort son mari, fet a entendre de cele femme qil marit dreinement tut [2] pur sa femme si par cas out plusours femmes en pleine vie.

Les poinz des tourns de viscountes e des veuues de franc plege sont desusez en troiz maners. Lune qe viscontes, baillifs, e seneschaux arentent extorsions de fins qil funt genz finer par quoi il ne soient enchesonez qil appelent pur bel pleder. Lautre qil amercient genz par presentemenz sur personeles acciouns. La tierce est qil chargent les jurours darticles tochaunz torz fet de veisin a veisin, ou de tenaunt a autre seignur qe al Roi.

Li point qe defent as genz de religion purchacer fieus destrut lestatut pus fet a Westmouster de meme le defens, en taunt qe laccion del chef seignur est limitie en si court terme pur hastir laccion le Roi en prejudice des seignurs de fieu.

[1] *Si* MS. [2] Corr. *tint.*

The article which forbids any one to alienate his land to the prejudice of the lord of the fee is to be understood thus: that no tenant is to alienate the fee of his lord without his lord's assent, or so that it shall be held in chief of his lord without the addition of a new service.[1] c. 32

The article as to the guardianship of abbeys and religious places during a vacancy is to be thus understood: that every lord is to have the wardship of his fee during the vacancy.[2] c. 33

The article that no one is to be taken or imprisoned on the appeal of a woman for the death of any one save her husband is to be understood of that woman whom the dead man last held as his wife in case he has several [would-be] wives alive.[3] c. 34

The article as to the sheriffs' turns and views of frankpledge is disregarded in three ways. The first is that sheriffs, bailiffs, and stewards arrent the extortionate fines which they exact from people *ne occasionentur* (that occasion be not taken against them), which fines they say are *pur bel pleder*.[4] Secondly, they amerce folk by presentments upon personal actions. Thirdly, they charge the jurors with articles touching torts done by neighbour to neighbour, or by a tenant to a lord who is not the king.[5] c. 35

The article which forbids men of religion to purchase fees annuls the statute afterwards made at Westminster, which contains the same prohibition, in so far as it limits a short term for the lord's action and speeds the king's right to the prejudice of the lords of the fee.[6] c. 36

[1] It is hard to believe that this clause was written after the statute *Quia emptores* was in full operation.

[2] This seems to be a perversion. Our author means that during a vacancy every piece of land held by the abbey is to fall into the wardship of the lord of whom it is held.

[3] The 'possessory' title of that wife in whose arms the man dies is to be preferred to proprietary claims. Compare Bracton, f. 306.

[4] The sheriffs exact fines from the suitors for *beaupleader*. A suitor is compelled to pay a sum in advance to absolve him from the penalties that he will assuredly incur if the strict rules of pleading are enforced against him. One 'occasions' a pleader by catching at his words. Then the sheriffs '*arrent*,' *i.e.* let to farm, the extortionate profits of the courts.

[5] The presentment procedure should not be used for the redress of mere private wrongs.

[6] Stat. 7 Edw. I. De viris religiosis. It gives each lord a year for

Le derreine point est de tele vertu e de tele entendement qe sicom le Roi ad les conoissaunces des trespas fez en ces [1] fieus aussi eient tuz fieu tenaunz lur courtz e les conoissaunces des trespas fez en lur fieus e aussi ben de reales accions, personeles cum de mixtes.

[*Ch. III.*] *Des articles sur lestatut de Mertone.*

Ascuns poinz sont repernables entre les estatuz fetz a Mertone pus la dite chartre fete, e nomeement le point de redeseisines, desicom dreit nateint nul trespassour par enqueste de office, e pur ceo qe respons porroient par cas valer a tieux tenanz e seroient par dreit alloables tendreit lu assises al foier de novel disseisine. E ceo qest dist qe redeseisours soient pris e detenuz en prison e puis seient reinz [2] nest forqe abusion de dreit qe voez qe chescun qe iert atteint de personel trespas soit puni par peine corporele sil ne la puisse reimbre [3] par deners. E ceo qest dit de cest estatut fet a entendre de trestuz les estatuz fez apres la primere confeccion de la grande chartre fete el tens le Roi Henri le tierz, car nest mie droit qe le [4] soit puni pur un fet de peine corporele denprisonment ou dautre e estre ceo par peine peccuniele ou par rancon, car ranceon nest autre chose qe rachat de peine corporele.

Li point denprouemenz de gasz e de deserz est repernable cum celi qest fet trop generalment, einz le covendreit aver distinctie, car en plusours lus est qe comuners sunt feffez en tieu manere qe les comuns [5] sunt soulement as tenaunz issi qe les seignurs ne i unt rien forqe le fieu. E en tieux cas est cest estatut prejudicial as comuners e repugnaunt a la grande chartre qe voet qe nul ne soit en-

[1] Corr. *ses.* [2] *remise* (1642). [3] Apparently so with dotted
[4] Corr. *len.* [5] *que lentier comon* (1642).

The last article has this force and meaning: that as the king has the cognisance of trespasses done in his fees, so also all fee tenants may have their courts and the cognisance of trespasses done in their fees, in all actions, whether real, personal, or mixed.[1]

[*Ch. III.*] *Articles upon the Statute of Merton.*

Some points in the statutes made at Merton after the making of the Charter are to be reprehended, and in particular the clause about redisseisins, for law will not attaint a trespasser by an inquest taken *ex officio*; and since in some cases the tenants [accused of redisseisin] may have a good answer and one that the law allows, the procedure ought to be like that of an assize of novel disseisin. And as to what is said of arresting and imprisoning redisseisors and then of ransoming them, this is a mere abuse, for the law wills that every one attainted of a personal trespass be punished by a corporal punishment if he cannot ransom it with money. And what is said of this statute is to be understood of all statutes made after the first making of the Great Charter in the time of Henry III., for it is not law that anyone should be punished for a single deed by imprisonment or any other corporal punishment, and in addition by a pecuniary punishment or ransom; for ransom is nothing else than the redemption of a corporal punishment. Stat. Mert. c. 3

The article as to the approvement of wastes and deserts is open to reprobation as being too general; for a distinction should have been made; for in some cases the commoners are enfeoffed in such manner that the common belongs to the tenants only, so that the lords have nothing but the fee. And in this case the statute is prejudicial to the commoners and repugnant to the Great Charter, which c. 4

his entry. Our author takes the side of the mesne lords against the king.

[1] This seems a strange perversion of the concluding clause of the Charter, whereby the barons are enjoined to allow to their tenants the same liberties that they have received from the king. Our author favours seignorial justice.

gette de son franc tenement nes apurtenaunces sanz loial jugement.

Li point de rap des mariages est repernable en taunt qe il iad accepcion des persones de lais e des clers, car nest nient plus dreit qe clerc pecchie saunz peine qe homme lai.

Autres poinz sunt repernables si tenaunz sunt [1] damage a lur seignurs ou le revers. Car ne mie soulement ne sont mie punissables solom les peines des estatuz, einz se defunt tuz liens de homage e de feaute par entre eus pur lur trespas sicom avant est dit entre les jugemenz des defautes.

Li point dattornez fere en suties [2] as hundreds est entendable en ceste manere, qe tut pusse sutier fere attorne pur li par cest estatut a sauver li defaute, pur ceo ne poet nul jugement estre rendu par attorne, ne nule femme nest nomee en cest estatut pur ceo qe nul jugement nest rendable par femme.

[*Ch. III. (B.)*] *Des estatuz de Marleberge.*

Des estatuz de Marleberge sunt ascuns repernables e nomeement les primers .v. poinz, pur ceo qe chescun personel trespas est punissable par corporele peine si li trespassour nen pust estre allegie par redempcion solom la quantite.

Li point qe comande qe la grande chartre soit tenue en touz ces poinz est defective par defaute de adicion de peine e semble truffe [3] a fere constitucions nient tenues.

Les poinz remediaux as seignurs des fieus est repernable en la mitigacion de la peine, car touz ceus qe funt fraude a la lei sunt punissables par peine corporele e ne mie par simples amerciemenz.

[1] Corr. *funt.* [2] *Sic.* [3] *semble crosse* (1642).

wills that none is to be ejected from his free tenement or the appurtenances without lawful judgment.[1]

The article about rape of ward is reprehensible, since it draws a distinction between laymen and clerks, for a clerk has no more right to sin with impunity than has a layman.[2]

Other articles are reprehensible, namely, those touching damage done by tenant to lord and *vice versa*, for in such cases the wrongdoers are not merely to suffer the punishments mentioned in the statute, but all the bonds of homage and fealty are undone between the parties by the trespass, as has been said before where we spoke of the judgments for defaults.[3] cc. 6, 7

The article as to the making of attorneys for suit at the hundred courts is to be understood thus: that albeit by this statute a suitor can make an attorney so as to save his default, still no judgment can be given by attorney. And in this statute there is no mention of women, for no woman can give judgment. c. 10

[*Ch. III.* (*B.*)] *The Statutes of Marlborough.*

Some of the Statutes of Marlborough are reprehensible, and in particular the first five articles, for every personal trespass is punishable by corporal punishment if the trespasser cannot obtain an alleviation by a proportionate ransom.[4] cc. 1-4

The article commanding that the Great Charter be observed is defective, for that it specifies no penalty, and it seems humbug to make constitutions which are not obeyed. c. 5

The articles which give remedy to the lords of fees are reprehensible in so far as they mitigate the punishment, for all those who defraud the law are punishable by corporal punishment and not by simple amercements.[5] c. 6

[1] Our author seems to contemplate a case in which, though the ownership of the waste is in the lord, he has no right to turn out beasts upon it.

[2] The chapter in question (*Stat. Mert.* c. 4) denounces a punishment only against laymen.

[3] See above, pp. 129, 130.

[4] The chapters in question relate for the more part to unlawful distraint.

[5] The chapter in question relates to collusive feoffments.

Li point des proclamacions de gardes est repernable cum celi qi est tut fondie sur errour sicom piert el chapitre de defautes.

Li point des redeseisours est repernable, car nul mandement especial ne deit passer comun dreit, ne nul peine denprisonement nest jugeable forqe[1] pur torcenous enprisonement.

Li point de doaires est repernable de si qe dreit se dust plus hastier en la court le Roi qe aillors.

Li point suant dattachemenz e des destresces est repernable, car en plez dattachemenz nest nule essoine allouable pur les defendaunz ne nul tiel ordre de destresces nest tenable solom dreit.

Li point qe defent qe nul ne face jurer ses tenaunz est repernable par ceo qe nule peine ni est ordene, e par ceo quil ni ad nule forprise, car plusours cas sunt ou genz deivent jurer tut ne voient il le comandement le Roi, sicom devant justices des forez, devaunt corouners e devant eschaetours, e sicom as tours de viscountes, as veuues de franc pleges, e sicom affoerours e as deliverances des gaoles.

Li point qe comande la capcion de ceux qi sunt tenuz daconte est repernable desicom laccion est mixte e voet somonse e nient personele.

Li point de gastours de fermes est repernable, car gast est personel trespas e demande personele peine e ne mie simple amerciement.

Ch. IV. Articles sur lestatut de Westmoustier.

Plusours autres poinz sunt repernables es estatutz primers de Westmoustier, car les poinz tochanz genz de religion sunt matire aporchaz denemis[2] e purchacie sur fundement de avarice plus qe a lur avantage.

[1] *forqe* repeated. [2] *mater pur purchaser deniers* (1642).

The article as to the proclamation of wardships is reprehensible, being altogether founded upon error, as appears in our chapter on defaults.[1] c. 7

The article about redisseisors is reprehensible, for no special ordinance ought to exceed common law, and the punishment of imprisonment should only be adjudged where there has been wrongful imprisonment. c. 8

The article about dower is reprehensible, for right should be speedier in the king's court than elsewhere. c. 12

The following article about attachments and distresses is reprehensible, for in pleas prosecuted by attachments no essoin is allowable to the defendants, and no such order of distresses holds good according to law. c. 12

The article which forbids a man to cause his tenants to swear is reprehensible, because it specifies no punishment, and because it makes no exception; for there are divers cases in which men ought to swear, although they do not receive the king's command, as *e.g.* before the justices of the forests, before coroners, before escheators, and at the sheriffs' turns and views of frankpledge, and as affeerors, and at gaol deliveries. c. 22

The article which commands the arrest of those who are bound to render account is reprehensible, for the action is mixed, not personal, and should be commenced by summons. c. 23

The article about farmers who commit waste is reprehensible, for waste is a personal trespass and demands a personal punishment and not a simple amercement. c. 23

[*Ch. IV.*] *Articles of the Statute of Westminster I.*

There are divers other articles in the first statutes of Westminster which are reprehensible, for the articles which concern men of religion are procured by enemies (?), and are founded rather on avarice than on the advantage of the religious.[2] c. 1

[1] See above, p. 129.

[2] The chapter in question forbids great men and others to constrain the religious houses to entertain them.

Li point des clercs rettez de felonie est repernable, car par defaute de addicion de peine ne sunt tieux clercs deliverez a lur ordeneires forqe a la voluntie del Roi e de ces justices.

Li point de wrec est repernable en taunt qe li trovour en est forjugie par lestatuz de part avouent[1] dunt il dust estre parcener del proffit, e si est repernable quant al agard de la peine.

Del point des amerciemenz est dit avant en la chartre.

Li point de prises est mout repernable sicom avant est dist.

Li point des felons siure pur la pees meintenir est repernable en la peine, car ascun est consentaunt as felons qe ne les prent cum il les porroit. E en meme la manere est de la peine des corouners contenu en larticle suant.

Li point des corouners eslire ne fu mie mestier daver este ordene, car plus bosoigne est as eslisours daver bons loiaux e sages corouners qe al Roi. E meux vaudroit daver ordene qe les corouners presentassent les poinz de lur office desouz les seals des jurours qe viscountes fuissent lur contre roulles.

Li point del enqueste de odio et atia est repernable pur Londres e autres lus enfranchiz ou nuls chevalers ne isunt.

Li point de mettre genz rettez de felonie qe ne se voellent mettre en pais a penaunce est si desusie qe len les tue sanz aver regard as condicions des persones. E si est repernable desicom len se purra par cas eider e aquiter en autre manere qe par pais e desicom nul nest penable

[1] *de parte avoier* (1642)

The article touching clerks accused of felony is repre- c. 2
hensible, for that no punishment is specified, and therefore such clerks are not delivered to their ordinaries save at the pleasure of the king and of his justices.

The article about wreck is reprehensible, for that the c. 4
finder is forejudged by the statute from claiming any share, whereas he ought to have a share in the profit; and it is reprehensible as to the punishment to be awarded.

Of the point about amercements we have spoken above c. 6
in connexion with the Great Charter.[1]

The article about prises is very reprehensible, as appears c. 7
above.[2]

The article about the pursuit of felons for the main- cc. 9, 10
tenance of the peace is reprehensible as regards the punishment denounced, for he is consenting to felons who does not arrest them when he can. There is a similar objection to the punishment of coroners mentioned in the next article.

There was no need for the article about the election of c. 10
coroners, for the electors have a greater interest than the king in having good, lawful, and prudent coroners. And it would have been better to have ordained that coroners should present the articles of their office under the seals of the jurors than that the sheriffs should be their controllers.

The article about the inquest *de odio et atia* is repre- c. 11
hensible as regards London and other privileged places where there are no knights.[3]

The article about putting to their penance men accused c. 12
of felony who will not put themselves upon their country is so much disused that they are killed without regard to their condition. And this article is reprehensible, because on occasion one may aid and acquit oneself in other wise than by one's country,[4] and because no one should be put

[1] See above, p. 178.
[2] A 'prise' is mere robbery. See above, p. 178.
[3] Here the hand of a Londoner may be apparent. The statute requires two knights on every inquest *de odio*.
[4] A hint at the ordeal. See above, p. 173. The statute here speaks of *le prison forte et dure*.

einz ces [1] qil isoit atteint de pecche *par* quoi il deit estre peine.

Les ordenan*c*es des peines de lung enp*r*isonement sunt a rep*r*endre sicom avant est dist.

Li point del orde de utlaguer les p*r*incipaux avant les accessoires nest mie estatut einz est revocacion de errour.

Li point des plevissables est rep*er*nable solom ceo q*e* dit est es accions. Les peines de lung enp*r*isonment contient errour solom ceo q*e* avant est dist.

La peine ver le Roi des heires madles mariez sanz le grie lur seignurs liges p*ar* entre les xiiij. anz e xxj. an est rep*er*nable. Dunt doit le Rei aver amende pus [2] ceo qil nad nule p*er*sonele sute pur amendes demander ?

Li point des heirs femeles contient errour sicom piert en la rep*r*ehension del point des mariages de la g*r*ande ch*ar*tre.

Li point des torcenouses destresces dust contenir la peine de robberie.

La peine des ministres deseisours p*ar* colour de lur office est rep*er*nable pur la simplesce si com piert entre les jugemenz.

Li point q*e* defent q*e* viscountes ne p*r*eignent [3] est rep*er*nable de ceo q*e* li Roi p*r*ent de eus e il ne prenent rien del Roi.

Li point de fieus [4] des clers e des ministres des justices en eires est rep*er*nable pur comune g*r*evaunce del people sanz rep*r*ise de p*r*offit.

Les peines denp*r*isonement sunt rep*er*nables p*ar* les reesons avantdites.

Li point de tolunz est rep*er*nable p*ar* la peine denp*r*isonement e p*ar* ceo q*e* tolunz ne sunt estabiiz en c*er*tein.

[1] Corr. *ceo.* [2] Corr. *pur.* [3] Supply *rewards* (1642). [4] *fines* (1642).

to pain until he is attainted of some sin for which he ought to be pained.

The ordinances denouncing long imprisonments are reprehensible, as has been said above. c. 13

The article about the order of outlawry—that the principals be outlawed before the accessories—is no statute, but the revocation of an error. c. 14

The article about the replevin of prisoners is reprehensible, as has been said above in our treatise on actions. Long terms of imprisonment are erroneous, as has been said above.[1] c. 15

The penalty due to the king in the case of an heir male married between the ages of fourteen and twenty-one years without the lord's consent is reprehensible. Why should the king have any amends when he has no personal suit to demand the amends? c. 22

The article about heirs female is erroneous, as appears in our strictures on the article about marriages in the Great Charter.[2] c. 22

The article about tortious distresses should impose the same punishment as for robbery. c. 23

The article about ministers who commit disseisin by colour of their office is reprehensible on account of its slightness, as appears in our chapter on judgments.[3] c. 24

The article which prohibits the sheriffs from taking reward is reprehensible, because the king takes from them and they take nothing from the king. c. 26

The article about the fees of the clerks and ministers of justices in eyre is reprehensible, because of the common grievance of the people without any equivalent profit. c. 27

The punishment by imprisonment is reprehensible for reasons given above.[4] c. 29

The article about tolls is reprehensible, because of the punishment of imprisonment, and because the amount of tolls is not defined. c. 31

[1] This chapter is the famous statute of bail.

[2] See above, p. 176.

[3] See above, p. 149.

[4] The statute here speaks of deceit committed by pleaders.

Li point qe voet qe ceus qe desusent murage[1] le perdent ne fu mie mestier davoir este fet, car lei voet qe cist qe[2] perde sa franchise qi la desusera.

Li point des recevours des deners le Roi et nient rendaunz lur prises est repernable par la simplesce de la peine solom ceo qe piert par reesons avantdites.

Lerrour des prises de charettes e dautres biens piert suffisament par reesons avantdites.

Li point qe defent jugement estre renduz par estranges en contiez est repernable, car nul jugement rendu par autre qe par juge ordenaire ou assignie ne fet a tenir.

Li point qe fet mencion de robberie en deseisines est repernable, car tuz ceux sunt pernables qui jurours enditent de robberie a foer de larrons ou dautres felons.

Li point datteintes est repernable, car il ne se duist mie estendre a un cas einz dust comprendre tuz seremenz pris par duzeine si lune des parties sen pleigne.

Li point des limitacions daccions est repernable par les reesons dites el chapitre sur meme la matire.

Les poinz qe defendent fausines e abusions usez en court avant tel tens sont vergoignous as faus juges qi la lei desuserent par suffraunce des faussines.

Li point des champions est repernable, car nul champion louiz nest recevable e[3] testmoinage.

Li point de essoines nient alouuer apres apparaunce en menues assises est repernable pur lassise de novele disseisine ou nule essoine nest allouable pur les tenanz nient plus devant apparaunce qe apres ne en nule autre personele accion.

Les autres poinz des essoines sunt repernables, car nule fausse cause de essoine ne dut fere avantage a nul homme.

[1] *mariadges* (1642). [2] Omit *qe*. [3] Corr. *en*.

There was no need for the article that those who make no use of the right of murage are to lose it, for the law wills that he who does not use his franchise shall lose it. c. 31

The article about the receivers of the king's moneys who do not give up what they take is reprehensible, because of the slightness of the punishment, as appears by the reasons given above.[1] c. 32

The error as to the seizure of carts or other goods sufficiently appears for reasons given above.[2] c. 33

The article which forbids that judgments be given in the county courts by strangers is reprehensible, for a judgment given by one who is neither judge ordinary nor judge delegate is of no avail. c. 34

The article [about] making mention of robbery in case of disseisin is reprehensible, for all ought to be arrested whom jurors indict of robbery, like thieves and other felons. c. 37

The article about attaints is reprehensible, for it ought not merely to extend to one case, but should comprise all oaths taken by a jury, if one of the parties makes complaint [of their falsehood].[3] c. 38

The article about the limitation of actions is reprehensible for reasons given in the chapter which deals with this matter.[4] c. 39

The articles directed against falsehoods and abuses practised in court in time past are shameful to the false judges who set the law at naught by suffering falsehoods. c. 40

The article about champions is reprehensible, for no hired champion should be received as a witness. c. 41

The article against allowing essoins after appearance in petty assizes is reprehensible, for in the assize of novel disseisin no essoin is allowed the tenants either after or before appearance; and so it is in all other personal actions. c. 42

The other articles about essoins are reprehensible, for no false excuse for an essoin should ever profit a man. cc. 43, 44

[1] This chapter relates to purveyance, which in our author's eyes is mere robbery.

[2] Such a seizure ought to be felony.

[3] The statute only allows attaint in pleas relating to freehold.

[4] See above, p. 107.

Li point de lais [1] en plez dattachemenz est repernable en plusours poinz solom ceo qe piert el chapitre des defautes.

Li point a parpleder briefs sourt de surcharge qe chiet en prejudice des viscountes e de seignurs de fieus e de fraunchises.

E tut ne soient les ij. poinz de deseisines forqe comune dreit e ancien, cest assaver qe chescun poet sure les amendes ou la peine del personel trespas fet a soun predecessour en taunt com a sa accion appent, de quel age qe les parties soient, uncore est li primer repernable en taunt qe les pleintifs nunt nul recovrir as damages fez a lur predecessours ne nule accion forqe al restitucion de la possession. E lautre point est repernable par la simplesce de la peine, einz apendreit solom comun dreit tele peine qe mes [2] ne se teinst lien de homage par entre eus par la forfeture del seignur quant il comensa desheriter soun tenaunt contre le dreit del homage.

La preiere le Roi est repernable pur ceo qil ne dust rien prier countre dreit, einz est la priere des justices qi desirent daver tuz les jours mout a fere.

Li point qe voet qe cil qe est vouchie a garaunt ne doit mie garantir, tut soit il oblige par le fet son auncestre qi heir il est en cas ou il allegge pur li qe rien ne li est descendu de cel auncestre par qi fet il est vouche, est repernable, car solum auncien droit demoerent fieus obligez a la sieute de la dette qe ceux reconoissent as queux les fieux sunt en qi meins qil deviegnent. En meme la manere soloit estre en touz autres contractz ou les contractz furent atteinz ou grantez. Car asset reconust qi par son fet sa

[1] Corr. *de delais.* [2] *jammes* (1642).

The article about delays in pleas prosecuted by attachments is reprehensible at several points, as appears in our chapter on defaults. c. 45

The article about pleading writs to the end[1] is too onerous and is to the prejudice of the sheriffs and the lords of fees and franchises. c. 46

And albeit the two articles about disseisins are but common and ancient law, namely, that everyone can sue for the amends or the punishment of a personal trespass done to his predecessor, according to the nature of his action, of whatever age the parties may be, still the first article is reprehensible because the plaintiffs have no recovery for damages done to their predecessors and only an action for restitution to possession. And the other article is reprehensible because of the slightness of the punishment imposed, for according to common law the punishment should be that the bond of homage should be utterly dissolved between them by the forfeiture committed by the lord when he began to disinherit his tenant contrary to the right of homage. cc. 47, 48

The prayer of the king is reprehensible, for he should pray nothing contrary to law; but this is really the prayer of the justices who desire to have much to do every day.[2] c. 51

[3] The article which says that one who is vouched to warranty need not warrant, albeit he is bound to warranty by the deed of his ancestor, whose heir he is, in case he alleges that nothing has descended to him from that ancestor on whose deed he is vouched, is reprehensible, for according to the ancient law the fees of those who confess a debt remain obliged as security for that debt, into whosesoever hands they may come. And the same rule was observed in all other contracts when the contracts were recovered or confessed in court; for there is recognisance

[1] The statute requires that the justices shall plead out (*parpleydent*) the writs of one day before beginning those of another.

[2] The statute ends with a request by the king addressed to the bishops, praying that assizes may be taken in Advent and Lent.

[3] Apparently our author, having done with Stat. West. I., here attacks one chapter (ch. 3) of the Statute of Gloucester (6 Edw. I.).

conoissance conferme. E tut soit qe rien ne descendist al heir, par taunt ne perdi nient le tenaunt par defaute daquitaunce. E si cist qe fu obligie a la garantie ne vousist garantir ne voucher outre, parrust par taunt qe launcestre en fu tenant par vicious title e qe il en fu possessour de male fei. E si le heir nust rien dunt fere laquitance, recoverast as tenemenz a cele garantie obligez. E si li heir nust dunt fere acquitance, ne nul fieu ne ifust trovee obligee, si li possessour perdit son purchaz, rectast [1] ceo a son fol contract, e autre foiz se purvoit de meillur sieurte avoir.

[*Ch. V. Lestatut de Westmoustier II.*]

Ceo qest dit es secunz estatuz de Westmoustier qe lei defailli en plusors cas fet a reprendre, car as tuz trespas est lei ordene coment qele soit desusie, oblie ou controvee par ceus qi ne la sevent. E les troiz primers poinz ne sunt mie estatut, einz sunt revocacions de errours de negligenz juges. Car dreit ne soeffre mie a son poer qe homme face a autre meillur estat qe il memes nad, einz voet qe chescun loial contract se face solom la conjunction des voluntiez des purparlours. E ceo qe est en lestatut qe si fin se leve en fraude dreit qe ele soit nule est repernable, einz put mieux estre dit issi qe par cel fin ne soit nule terce [2] person barre de son droit, car fin levee ne poet mie legerement estre nule, einz se tient en sa vertu e forclos al meins le donour daccion.

Li point des destresces ne rapele nul errour, einz lafferme sicom avant piert el secund livre. E ceo qest dit en meme lestatut qe sutiers ou countiez nunt nul record nest

[1] Corr. *rettast.* [2] *certaine* (1642).

enough if by one's deed one confirms one's 'cognisance' (confession). And albeit nothing descends to the heir, the tenant ought not by this reason to lose his acquittance [the benefit of the contract to acquit him]; and if the vouchee will neither warrant nor vouch over, then it appears by this that his ancestor held by a vicious title and was a *mala fide* possessor. And if the heir has nothing whereout to acquit the tenant [by giving him an exchange], then the tenant must have recourse to the tenements that were bound by the warranty. And if the heir has nothing whereout to acquit the tenant, and no fee can be found that is thus bound by the warranty, then the possessor loses his purchase, and must set this down to his foolish contract, and take care another time to have better security.

[*Ch. V. Statute of Westminster II.*]

What is said in the second statutes of Westminster[1] as to the failure of law in divers cases is open to objection, because for all trespasses there is law ordained though it may be disused, forgotten, or perverted by those who know it not. And the first three articles are no statutes, but merely revoke the errors of negligent judges. For law will not allow that anyone can make to another a better estate than he himself had, but wills that every lawful contract be executed according to the conjoint wills of the contracting parties.[2] And what the statute says about a fine in fraud of the law being void is reprehensible; it would be better to say that by such a fine no third person shall be barred of his right, for a fine when levied cannot easily be null, but holds good of its own virtue and estops at least the donor from his action. cc. 1, 2, 3

The article about distresses affirms, rather than repeals, an error, as appears in our second book. And what is said in the same statute about the suitors of the county courts c. 2

[1] See the preamble.

[2] This is aimed at the famous *De donis conditionalibus*. There should have been no need for such a statute.

forqe abusion, einz est chescun loial testmoinage record e chescun faus testmoinage menceonge. E ausi loialment poent autres genz testmoigner cum les justices assignez. Nest ceo bien abusion a grantir as countiez recorz en utlaguaries, plegeages, meinprises, batailles, granz assizes, e autres cas, e ne mie autres poinz; e dedire qe viscounte ou seignur del fieu, ou autre a qi le Roi mande son bref, neit aussi ben record des proces dedut devant li qe tiex qi sapelent justices, nest forqe errour? E quant as causes des briefs de ponez[1] est sofferte grant error de ceo qe grantie nest mie qe cil pusse[2] en laccessoire qe poet conustre el principal, desicom dreit ne soeffre nul estre eidie par menceonge ne par brief vicious. Dautrepart de quoi siert plus realiter en lestatut qe personaliter, desicom plus sunt attachemenz agardez en personeles accions qen mixtes ou reales?

Li point de meesus[3] est repernable quant as proclamacions e quant as non acquitaunces de ceux qi par meins de service tenent qe les moiens; car soit qe B tiegne cent liveres de terre de A par service de xx. li. par an, e cil B doigne ent sa[4] moiete en pure aumoine ou en mariage ou pur le service de une rose a C, cil avient qe cest B forface ou alliene quant qil ad, par cest estatut nest ordene nule remedie a C, qi estoit achever a A. E pur ceo fet a tenir launcien courz qe avant est dit es jugemenz.

Lestatut remedial de dreit la femme perdu par la defaute del marit est repernable, car auncien droit voet qe

[1] *paines* (1642).
[2] Supply *conustre*.
[3] *measures* (1642); corr. *mesne s*
[4] Corr. *la* (1642).

having no record is a mere abuse, for every lawful testimony is a record and every false testimony is a lie, and other folk may just as lawfully testify as may the justices assigned. Is not this a pretty abuse, to allow that the county courts can have record of outlawries, plevins, mainprises, battles, grand assizes, and so forth, and yet no record of other matters? And to deny that the sheriff or the lord of the fee to whom the king sends his writ can just as well bear record of the processes which take place before him, as can those who call themselves justices, is not this mere error?[1] And as to the causes alleged in writs of *Pone*[2] great errors are suffered, since he who can take cognisance of the principal matter is not allowed to entertain an accessory question, whereas right will not suffer that anyone should profit by a lie or a vicious writ. Again, why should there be more talk of *realiter* in the statute than of *personaliter*, when more attachments are awarded in personal actions than in mixed or real?[3]

The articles about mesne tenures is reprehensible, so far c. 9
as regards the proclamations, and so far as regards the non-acquittance of those who hold by less service than do their 'mesnes.' For put case that *B.* holds a hundred librates of land of *A.* by the service of £20, and gives half of it to *C.* in frank almoign, or in marriage, or by the service of a rose, if then it happens that this *B.* commits a forfeiture or alienates what he has, no remedy is ordained by this statute for *C.*, who has to achieve to *A.* And therefore we must follow the old rule which is set forth in our chapter on judgments.[4]

The statute which gives remedy to the wife who loses c. 3
her right by her husband's default is reprehensible, for the

[1] An outburst in favour of the local courts, which ought to be treated as 'courts of record.'

[2] The *Pone* is the writ for removing a cause from the local to the royal court. The cause for the removal is mentioned in the writ; but apparently the local court has no means of protecting itself against writs obtained by false allegations.

[3] This is a stupid, if not a wilful, misinterpretation of the statute, which uses the word *realiter*, not as a contrast to *personaliter*, but in that sense in which we often use *really* when we say that something is *really true*. The avowant in the action of replevin is *really* rather plaintiff than defendant.

[4] See above, pp. 129, 130.

femme apres le deces son mari face replevir son heritage ou purchaz issi perduz e resomondre les tenaunz. Car nul cape nest forqe destresce e ejeccion de seisine sauve chescun droit, e si com list a lun des tenaunz en comun defendre son dreit ou il sent son damage par fraude ou la negligence ou le non poer de son parcener, en meme la manere le poet femme solom dreit dendreit son baron.

E ne mie soulement ne donne dreit a vedves accion a demander doeires en cas nomeez en lestatut, eint fet en tuz cas ou dreit donne recoverer de fieu perdu par jugement reversable.

E ceo qe contenu est qe tenaunz ou autres poent voucher garaunz nest forqe abusion: coment tient voucher lu ou brief ne tient lu? Einz entendez seinement qe nule juresdiccion de jugie[1] assignie ne sestent a autre persone qe as celes qe sunt nomees el brief par nul voucher nen plus qe en mesus[2] par brief de replegiari. E pur ceo sunt garaunties attamables e terminables par briefs. E si contient plusours autres errours, sicom piert en la lei de fieus.

Lestatut suant qe ordene briefs remediaux novex apres defautes est prejudiciel as seignurs de fieus qi pernent[3] les avantages de lur courz par ceo qe briefs de dreit sunt defenduz en tieux cas ou il soloient estre usez.

Presentemenz deglises ne se deivent fere for es nons de ceux as queux le mier droit des avoesons appent solom ceo qe avant est dit en les contractz. E tut est errour e abusion de dreit a partir avoesons deglises ou de douuer ent femmes ou de lesser les a ferme ou a terme dautri vie ou en mariage ou en gage ou par fieu taille ou autre-

[1] *juge* (1642). [2] *mesme* (1642); corr. *mesnes* (?). [3] Corr. *perdent.*

old law wills that a woman after her husband's death shall replevy her heritage or her acquests thus lost, and shall resummon the tenants: for no *Cape* is more than a distress and an ejectment from seisin *salvo iure cuiuslibet*; and as one of several tenants in common can defend his own right where he feels that he is damaged by the fraud, negligence, or impotence of his parcener, in the same way according to law a woman may behave as regards her husband.[1]

And law does not give to widows an action for their c. 4
dowers merely in the cases mentioned in the statute; it does the same in every case where law gives a recovery of a fee that has been lost by a reversible judgment.

And what is said about tenants and others vouching to c. 6
warranty is a mere abuse, for how can there be warranty where there can be no writ? We ought to understand aright that no jurisdiction of a judge delegate can by any voucher to warranty be extended to any person not named in the writ, any more than the jurisdiction given by a writ of replevin can be extended to mesnes.[2] And for this reason is it that vouchers to warranty are to be commenced and determined by writs. And there are other errors here contained, as appears in the law of fees.

The following statute, which ordains new remedial writs c. 7
after default, is prejudicial to the lords of fees, who lose the profits of their courts, because writs of right are forbidden in cases in which they were formerly used.[3]

Presentations to churches should only be made in the c. 5
names of those to whom the greater right in the advowsons belongs, as has been said above in our chapter on contracts; and it is altogether error and abuse to make partition of the advowsons of churches, or to endow women therewith, or to let them to farm or for the life of another or in marriage or by way of gage, or in fee tail, or otherwise than in

[1] Our author's doctrine seems to be that if in an action the husband loses the wife's land by making default, then after his death the wife has no need to begin a fresh action, but can proceed by way of replevying the land and resummoning the tenant, as though the original action were still pending; a judgment given upon a default is merely provisional and reversible.

[2] Text obscure.

[3] In favour of seignorial justice.

ment qe en perpetuitie. E ceux qi receivent clers presentz as eglises en prejudice de tex as queux le mier droit perpetuel est sunt tenuz a la restitution des damages. E ceux eient recoverer as jurours par queux il estoient certifiez del droit del patronage. E issi piert qe la peine tient plus les evesqes qe les presentours. E ceo qest ordene long enprisonment pur peine nest forqe abusion, desicom nul nest enprisonable si noun pur torcenouse enprisonement.

Lestatut de garanties nest forqe revocacion de errour usee jesques a dreite lei.

Lestatut damesurement est repernable quant as proclamacions, desicom amesuremenz e surcharges sont fesables par jurees doffice.

Lestatut des moiens est repernable en plusours poinz, sicom piert es chapitres de naams, de contractz e de defautes, e ceo piert en la fin del estatut ou les actours ne saveint fin mettre.

Lestatut de suspencion des briefs en eires est repernable cum repugnaunt a la grande chartre qe dist, ' Nous ne veerons a nul dreit ne delaerons.' E pur quei sunt briefs rebotables de audience? Einz pur la multitude des briefs qe adunt se funt e par petit noumbre des justices perist dreit a plusours.

Lestatut sur aconte

Li estatut des obligez en aconte est repernable en plusours poinz. Lun quant as excepcions[1] des persones, car as seignurs est ordene recoverir e as serjanz nul. Autre quant auditours sunt donables sanz lassent des serjaunz. Lautre qe as auditours nestoit allouuer forqe a lur voluntie sanz peine. Lautre qe li recoverer est ordene

[1] Corr. *accepcion.*

perpetuity.[1] And those who receive clerks who are presented to churches in prejudice of those to whom the greater perpetual right belongs are bound to make restitution in damages. And those who have to pay such damages can recover them from the jurors [?] who made certificate about the right of patronage. And thus it appears that the punishment falls rather upon the bishops than upon the presenters. And as to what is ordained about punishment by long imprisonment, this is just an abuse, for no one should be imprisoned save for wrongful imprisonment.

The statute about warranties is merely the revocation to right law of a prevailing error. c. 6

The statute of admeasurement is reprehensible so far as concerns the proclamations, for admeasurements and surcharges should be effected by juries *ex officio*. c. 7

The statute about mesnes is reprehensible in various points, as appears in our chapters on naams, contracts, and defaults; and this is plain from the end of the statute, for its makers did not know how to make an end to it.[2] c. 9

The statute about the suspension of writs in the eyres is reprehensible, as being repugnant to the Great Charter which says 'We will not deny nor delay justice to any.' And why is it that writs are rejected and do not come to a hearing? Because of the multitude of writs made nowadays and the small number of the justices; and thus many fail to get law. c. 10

The statute about those who are bound to account is reprehensible in divers particulars. One concerns the acceptance of persons, for a remedy is ordained for the lords and none for the servants. Another is this, that the auditors can be appointed without the assent of the servants. Another that auditors should not make allowances at their discretion without punishment.[3] Another that the c. 11

[1] See above, p. 75.

[2] At the end of this chapter the legislator confesses that he has not dealt with all existing grievances, and that further legislation will be necessary.

[3] Meaning doubtful.

par la detenue des serjaunz e mie a la sieurtie ne as chatieux. Lautre qe les seignurs ne sunt arestables al foer des serjaunz. Lautre qe la malveistie des auditours remeint despunie. Lautre del lutlaguerie, car nul nest utlagable si non pur pecche mortiel. Lautre quant a la peine del enprisonement, car nul nest enprisonable si non pur torcenous enprisonement.

Lestatut des appeax est repernable en ij. poinz, lun de lespece de la peine corporele e de la pluralitie des peines, desi qe redempcion par peine peccuniele nest forqe alleggiaunce de peine corporele. Lautre de juresdiccion aver sur les abbettours sanz bref origenal.

Pur lestatu de Gast

Les estatuz de gast sont fundiez sur errour, desicom gast est un personel trespas, e voet autre manere de proces sicom piert el chapitre des defautes. E a defendre personel trespas par brief nest forqe vein travail.

Lestatut de fause cause nient allouer en lessoine de mal de lit est defectif, car en nule essoigne ne nule part est fausse cause ne autre faussine allouable ne profitable ne deit estre a nul.

Li estatut des dettes e damagez recoverez est defectif, car ne mie soulement ferroit[1] cel remedie atteint en la court le Roi einz dust comprendre totes lais courz.

Lestatut des morz saunz testament est defectif, car il dust comprendre felons e futifs aussi bien cum loials genz, e le Roi e tuz autres en qi meins lur biens devenent aussi bien com ordenaires, car nul ne poet forfere autri droit.

Lestatut dallouer une manere dexcepcions en semblables accions ne fu mie mestier davoir este ordene, si non pur negligence des justices, car chescun affirmation est encontrable de sa negative al peril del niant.

[1] Corr. *serroit*.

recovery is enforced by detention of the servants and not by process against their sureties and chattels. Another that the lords cannot, like the servants, be arrested. Another that the wickedness of the auditors remains unpunished. Another that there is outlawry, for none should be outlawed save for mortal sin. Another that the punishment is by imprisonment, for none should be imprisoned save for wrongful imprisonment.

The statute about appeals is reprehensible in two particulars. One concerns the nature of the punishment and the plurality of punishments, for the pecuniary punishment should be nothing else than an alleviation of the corporal punishment. The other is that which gives jurisdiction over abettors without an original writ. c. 12

The statutes about waste are based on error, for waste is a personal trespass and requires another kind of process, as appears in our chapter on defaults, and to issue a prohibitory writ against a personal trespass is labour lost. c. 14

The statute about not allowing false causes for the essoin *de malo lecti* is defective, for in no essoin and on no occasion is a false cause or other falsehood allowable, but it should profit no man. c. 17

The statute about the recovery of debts and damages[1] is defective, for this remedy should be attainable not only in the king's court, but all lay courts should be comprehended. c. 18

The statute about those who die intestate[2] is defective, for it should comprise felons and fugitives as well as lawful folk, and the king and all others into whose hands their goods shall come, as well as the ordinaries, for none can forfeit the right of another.[3] c. 19

The statute about allowing similar 'exceptions' in similar actions would have been needless but for the negligence of the justices, for every affirmative may be encountered by its negative at the peril of him who denies. c. 20

[1] The chapter which gives the *elegit*.

[2] The ordinary is to pay the intestate's debts.

[3] The king should be bound to apply the forfeited chattels of dead felons in payment of their debts.

Lestatut de detenue de *ser*vice est noveleric damaious as scignurs des fieus, sicom piert el chapitre des defautes.

Lestatut de brefs noveax fere nust mie este mestier daver este fet, si la p*ri*mere ordenaunce des briefs fut tenue.

Lestatut de remedie aver p*ar* assise de no*vele* dis*seisine* est rep*er*nable en taunt qe il ne comprent nient fieus chargez de villeins custumes ne fieus tenuz a t*er*me des anz. Le point nestovereit aver defendu fauses excepcions si les poinz se tenissent del charge des contours. E q*uan*t a la peine enp*ri*sonement est lestatut rep*er*nable p*ar* resons ava*n*t-dites, e aussi q*uan*t a la peine des doubles damages, car dreit ne donne a nul plus q*e* sa demande. E p*ar* ceo piert q*e* lestatut de faus apeals est plus errour q*e* dreit en lordenement dagarder amendez as defendaunz p*ar* la ou il ne sunt mie pleintifs. E q*uan*t del boef al oeps des viscountes en deseisines nest mie estatut einz est voluntie e tort.

E ceo qest usie a *gran*tir damages en p*ar*tie ou el tut as justices ou a clers corelaires [1] as justices ou a ministres ou a autres serroit bon defendu cu*m* usage damaious al poeple.

E sicom les peines su*nt* rep*er*nables en noveles deseisines aussi sunt eles en les estatuz de redeseisines. Corporeles peines neqedent tienent lu en tiex p*er*sones [2] trespas, mes en redeseisines plus q*e* en seisines.[3]

Lestatut defendaunt q*e* briefs doir e t*er*miner ne soient mie leg*er*ement grantie nest fondie sur nul dreit cum celi qest repugnaunt a cest mot de la ch*ar*tre, nous ne veeroms

[1] *contraries* (1642). [2] Corr. *personels.* [3] Corr. *descisines.*

The statute about detention of services[1] is a novelty injurious to the lords of fees, as appears in our chapter on defaults. c. 21

The statute about making new writs need never have been made had the original ordinance about writs been observed.[2] c. 24

The statute giving a remedy by assize of novel disseisin is reprehensible, in so far as it does not comprise fees charged with villain customs or fees held for terms of years.[3] And it need not have forbidden false 'exceptions' if the articles concerning the duties of pleaders had been observed. And as to punishment by imprisonment the statute is reprehensible for reasons given above. And so as to the penalty of double damages, for law will give to none more than his demand. And therefore it is that the statute about false appeals seems rather error than law, for it awards damages to defendants, whereas defendants are not plaintiffs. And as to the ox for the use of the sheriff in disseisins, this is no statute, but lawless will and pleasure.[4] c. 25 c. 12

And as to the practice of granting the damages in whole or in part to the justices or to the clerks related to[5] the justices, or to the officers or others, it were well to forbid this as injurious to the people.

And as the punishments for disseisins are open to objection, so are those ordained by the statutes of redisseisin; still, corporal punishments are permissible for such personal trespasses, but rather for redisseisins than for disseisins. c. 26

The statute forbidding that writs of *oyer et terminer* be lightly granted is founded upon no right, but is repugnant to the words of the charter, 'We will not deny or delay c. 29

[1] The chapter gives the *Cessavit per biennium.*

[2] Aimed at the celebrated clause about writs *in consimili casu.* Our author supposes some original ordinance declaring that there shall be a writ for every wrong.

[3] Once more the doctrine that villain holders and termors should have the assize.

[4] This passage refers to the ox which the sheriff claimed from a convicted disseisor. See Bracton, f. 187; and this chapter of the statute.

[5] Translation doubtful. Apparently a successful plaintiff was in some cases expected to allow the justices or officers of the court to receive some part of the damages. See Stat. 17 Car. II. c. 6.

ne delaerons dreit a nul, einz nient[1] de temporeles justices qil le firent pur lur avantage cum ceux qi desirent tuz plez enbracier e heent[2] qe plus des justices seient, si par eux ne seient a cel avancement procurez.

Lestatut des capcions des assises a iij. foiz par an est repernable quant a leniornement des parties hors de counties requis[3] par devant les justices del banc qi nule jurisdiccion nunt de sur ces plez sicom les commissions sont donees as justices assignes. E quant as jurees e enquestes prendre en lur conties nest lestatut nient tenu a deshonour des auctors e en damage del poeple.

Lestatut qe defent qe justices ne facent jurours dire forqe lur avis est defectif sicom piert el chapitre de jurours.

Lestatut des excepcions allouables reboties par justices nest fundie sur nul dreit, sicom piert el jugement de fausses justices, einz est truffe quant il nest nule part tenu.

Lestatut de rap est repernable, car nul ne poet ordener par estatut qe venial pecche soit torne en mortiel sanz lassent lapostoille ou lemperour.

Lestatut qe li Roi eit sute en rap ou en allopement des femmes maries est repernable, car nul nest tenu a respondre a la siute le Roi si non par apel ou par enditement. E ceo qe est contenu de femmes perdre doeire pur le pecche devoutire dust aussi comprendre ceus avoutres qe cleiment a tenir les heritages lur femmes par la lei d'Engleterre, si qe nule accepcion ne soit en persones. Lenprisonment des allopours de noneyns e la ranceon ovek nest mie lei, einz est errour en double manere sicom avant est dit en plusours lus.

[1] Corr. *heent les temporeles justices* (?) This passage is very obscure. It seems to accuse the permanent justices of procuring a clause profitable to themselves.

[2] *nient* (1642).

[3] Corr. *jeques*.

right to any,' [and those who made the statute hate the temporary justices since they desire to embrace all pleas for their own profit and hate that there should be any more justices, unless it be such as are advanced to the bench by their procurement.]

The statute as to taking assizes three times a year is reprehensible, so far as concerns the adjournment of the parties out of their counties before the justices of the Bench, for those justices have no jurisdiction over such pleas, for the commissions are given to the justices assigned.[1] And as to the taking of juries and inquests within their proper counties, this statute is disregarded, to the dishonour of its authors and the damage of the people. c. 30

The statute which forbids the justices to compel jurors to give verdicts without mentioning 'the best of their belief' is defective, as appears in our chapter on jurors.[2] c. 30

The statute about the rejection by justices of allowable 'exceptions' is not founded on law, as appears from the judgment of false jurors; on the contrary, it is humbug, for it is nowhere observed. c. 31

The statute about rape is reprehensible, for no one can by statute ordain that a venial shall be converted into a mortal sin without the assent of the Pope or the Emperor. c. 34

The statute giving the king a suit for rape and for elopement of married women is reprehensible, for no one is bound to answer to the suit of the king save upon appeal or indictment. And what is said about women losing their dowers by the sin of adultery should include adulterous husbands who claim to hold the inheritances of their wives by the law [curtesy] of England, that so there may be no acceptance of persons. The imprisonment, coupled with ransom, for the elopers of nuns is not law, but is error and twofold error, as has been already shown in many places. c. 34 c. 35

[1] In a writ of novel disseisin or mort d'ancestor there is no mention of any justices save the justices of assize; therefore, it is argued, the justices of the Bench have nothing to do with these assizes.

[2] See above, p. 173. Jurors are sworn to tell the truth, not to give their opinions. The statute errs in allowing the justices to be content with something short of an express answer to the question at issue.

Lemprisonement de ij. ans ou de plus ordene pur peine corporele as ravissours de mariages nest forqe errour, car nule corporele peyne ne dust estre ordene si non pur comun prou, sicom avant piert de penaunces overtes. E ceo qest ordene de proclamacions en personeles accions nest forqe abusion de dreit, sicom est dit en lestatut de moiens.

Lestatut qe agard ranceon est repernable, car ranceon nest autre chose qe redempcion de peine corporele.

Lestatut des destresces fetes par baillifs desconuz est destinctable, car en destresces torcenouses sanz garant tendreit lu le jugement de robberie e par garaunt est chescun recevable conu e desconu.

Lestatut des jurours est repernable, car dreit voet qe les actours eient eide de la court a fere venir les testmoins dunt il se puissent plus loialment eider saunz destinteison des personnes. E ceo qe juresdiccion est grantie as justices assignez doir e terminer pleintes sanz especiale commission nest forqe abusion.

Lestatut qe agard qe brief de jugement se face sanz garant de brief original nest autre chose qe congie a fausser le seal le Roi.

La peine des viscountes malement responaunt est repernable quant a la peine, car desheritours le Roi pecchent el crim de magestie e sont par consequent punissables par la mort, qe ne deit mie estre en tieux cas. E quant as issues est lestatut repernable, car nuls issues sunt agardables forqe apres defautes en accions mixtes, e ne mie al oes le Roi, einz pur le prou des pleintifs.

Les defenses fetes es estatuz suanz des clers, criours e autre ministre de la court ne sunt forqe truffe pur ceo qe eles ne sont point tenues.

Lestatut qe conoissaunces e enroullemenz qe se funt

The imprisonment for two years or more ordained as punishment for the ravishers of marriages is naught but error, for no corporal punishment should be ordained save for the good of the public, as appears where we spoke of open penances. And what is ordained about proclamations in personal actions is mere abuse of law, as is said in our remarks on the statute of mesnes. c. 35

The statute awarding ransom is reprehensible, for ransom is but a redemption of a corporal punishment. c. 36

The statute about distresses made by unknown bailiffs is distinguishable, for in the case of tortious distresses made without warrant the judgment should be as for robbery, but if there be warrant then anyone can be received [to avow the distress], be he known or unknown. c. 37

The statute about jurors [1] is reprehensible, for the law wills that the plaintiffs shall have aid of the court to cause to appear those witnesses by whom they can aid themselves most lawfully without distinction of persons. As to the grant of jurisdiction to justices assigned to hear and determine plaints without special commission, this is a mere abuse. c. 38

The statute which awards the making of a judicial writ without the warrant of an original writ is no better than a licence to falsify the king's seal. c. 38

The punishment for sheriffs who answer badly is reprehensible as regards the punishment named in it, for the disheritors of the king [2] sin by the crime of *lèse majesté* and are punishable by death, and this should not be so in these cases. And as to the issues the statute is reprehensible, for no issues are awardable except after defaults in mixed actions, and then they do not go to the king's use, but to the profit of the plaintiffs. c. 39

The prohibitions contained in the following statutes about clerks, criers, and other ministers are just humbug, for they are not regarded. c. 44

The statute that confessions and enrolments made in c. 45

[1] Relieving the poorer freeholders from jury service.

[2] The statute declares that sheriffs who make false returns are to be punished as disheritors of the king.

en la chauncellerie a leschecqer e par devant justices soient cruz e tenuz estables est auctorite de grant mal, car par faus enroullemenz porreit chescun a ceo auctorite destrure queux qil voosist, qe serreit grant inconvenient. Dautrepart accrestreit par cest estatut auctorite al chanceller e a autres a fauser le seal le Roi par briefs de jugement fere sanz garaunt de briefs origenaux. E pur ceo notez qe nul ne poet forpris le Roi receivre attornez en la court le Roi ne reconoissances sanz garant des briefs origenal e sanz dreit proces dentre parties.

Lestatut des enprovemenz des gastz e des comuns pastures est repernable e distinctable solom ceo qe avant est dit.

Lestatut de veuue de terre avoir nest forqe torcenous delai del droit auctours, car assez suffist la veuue par la certificacion des somenours qi deivent saver del quel tenement les tenanz sunt somenables.

Lestatut qe defent qe nul ministre de la court ne preigne presentement deglise ne autre chose qe soit en ple ou en debat nest nient tenu.

[*Ch. V.* (*B*).] *Sur lestatut de Gloucestre.*

Les estatuz des damages recoverer en plez de possession purvueus a Gloucestre e aillurs e des treble damages en gastz sont repernables, car droit ne donne a nul plus qe sa demande, e pur ceo convendreit qe mencion de damages se feit es briefs, si damages serreint agardables, car juge ne poet nient passer les poinz de son garant, e issi serreit mestier duser solom la primere ordenaunce des briefs.

Lestatut de tenemenz alienez en fieu en prejudice dautri dreit est repernable, car li remedie dust estre tiel cum est de gardeins alienors a la desheriteson des dreiz heirs.

the chancery or the exchequer or before justices are to be credited and taken as established is a source of great evil, for by means of a false enrolment anyone can destroy by this authority whom he pleases, and this would be a great absurdity. And, again, by this statute there accrues to the chancellor and others power to falsify the king's seal, by issuing judicial writs without the warrant of original writs. And note here that no one, save the king, can receive an attorney in the king's court, or a recognisance without the warrant of an original writ and without due process between litigants.

The statute about approvement of wastes and common pastures is reprehensible and distinguishable, as has been said above. c. 46

The statute as to having a view of the land is just a wrongful delay for rightful plaintiffs, for the certificate of the summoners will satisfy the requirement of a view, for they ought to know in respect of what tenement the tenants are to be summoned. c. 43

The statute which forbids any officer of the court to accept the presentment to a church, or anything else that is the subject of plea or debate, is disregarded. c. 49

[*Ch. V. (B).*] *Of the Statute of Gloucester.*

The statutes provided at Gloucester and elsewhere about the recovery of damages in possessory actions and about the treble damages for waste are reprehensible, for law gives to none more than he demands; and therefore there ought to be mention of damages in the writs, if damages are to be awarded; for a judge cannot exceed the terms of his warrant; therefore the practice should be that which was required by the original ordinance of writs. Stat. Glouc. cc. 1 5

The statute about tenements alienated in fee to the prejudice of another's right is reprehensible, for the remedy should be the same as that which there is when a guardian alienates to the disherison of the right heir. c.

Lestatut de trespas pleder en contiez est repernable par defaute de distinteison, car menuz trespas, dettes, covenaunz enfreinz e tieux autres injuries nient passanz xl. soudz unt sutiers poer a oir e terminer saunz bref par garant de juresdiccion ordenaire e par brefs plus grauntz, car viscountes unt plus aperte juresdiccion en lur briefs viscountals qe justices de banc par les pones. E notez briefment qe quanqe est toleit des plez as viscountes e as seignurs de fieus est ordene al avantage des justices al damage des viscontes qe unt les conties afferme e al damage del poeple. E quant al recoverer de xx. s. ou plus dendreit lessoine del service le Roi nient garanti est lestatut repernable, car cele essoigne porra estre gete ou li defendaunt vodra fere defaute par la partie adverse e issi averoit il avantage de sa malice.

Lestatut qe defent legier abatement de apeals nest mie tenu.

Lestatut qe agard homme innocent a demorer en prison ou daver nule manere de peine pur homicide necessaire ou par mescheaunce ou nul pecchie nest trovie nest forqe abusion.

Les estatuz fesanz mencion de Londres e des Londreis se dussent estendre commonement parmi le reaume.

[*Ch. VI. De Circumspecte agatis.*][1]

Le primer point qe dist qe la reale prohibicion ne tiegne lu en correcions des pechies mortels en cas ou peine peccuniele est enjoingnable par ordenaires, est fondie sur aperte errour ki sage[2] enjoindra peccuniele peine pur

[1] No new heading in MS. For this so-called statute, see Statutes of the Realm, vol. i. p. 101.

[2] *e usage* (1642).

The statute about pleas of trespass in the county courts is reprehensible as ignoring a distinction; for petty trespasses, debts, breaches of covenant, and such other injuries as do not exceed the sum of forty shillings, the suitors may hear and determine without writ by the warrant of their ordinary jurisdiction, and greater matters they may entertain by writ, for sheriffs under their vicontiel writs have a more patent jurisdiction than have the justices of the bench under writs of *Pone*. And observe in short that whatever pleas are taken away from the sheriffs and the lords of the fees are given over to the profit of the justices to the damage of the sheriffs, who hold their counties at farm, and to the damage of the people. And as to the recovery of twenty shillings or upwards in respect of an essoin *de servitio regis* which has not been warranted, the statute is reprehensible, for this essoin may be cast by the adverse party where the defendant wishes to make a default, and so [the plaintiff] will profit by his own malice.[1] c. 8

The statute against the abatement of appeals for slight cause is not obeyed. c. 9

The statute which awards an innocent man to remain in prison or to suffer any kind of punishment for homicide by necessity or mischance where no sin is found, is nought but an abuse. c. 9

The statutes which mention London and the Londoners ought to be extended generally to the whole realm. cc. 12-15

[*Ch. VI. Of Circumspecte agatis.*]

The first article, which says that the royal prohibition is not applicable to cases of the correction of mortal sins where the ordinaries enjoin a pecuniary punishment, is founded upon obvious error and a practice of enjoining pecuniary punishment for a mortal sin, which practice is

[1] The plaintiff will cast a false essoin in the defendant's name in order to claim the statutory penalty.

pecchie mortel ne place a teu, einz sentremettent a descrestre la juresdiccion le Roi com foi mentuz qe lavuouent.

Les autres poinz a chacer parochiens par cohercion de clore cimitiers, doffrir, de doner mortuaires, deners pur confessions, pur pain benoit, pur eglises coverer, chaliz, luminaire, seinz vestemenz ou autre aornement deglise sunt plus fondes sur covetise qe sur amendement dalmes, desicom les persones de eglises en font a reprendre e ne mie les parosiens e en sunt chargees par le tierz de lur dimes. Des dimes notez qe puis ceo qe eles sont offertes a dieu sont eles si espirituеles qe eles ne sunt dispendables forqe en amones e espiritalment, car mes ne sont convertibles en lais us, e dunt si ascun parossien pur mal de la persone de leglise retient dimes, ou les emble ou ne les rent nient duement ou nient pleinement, pur ceo nest il mie punissable par peine peccuniele einz est par corporele. Pur lescomenge ne[1] nul peccunniele ni fet a demander pur restitucion ou satisfaccion nient plus qe de pain ou de jeu ; e si demande peccuniel icourge la prohibicion itendra lu, e de mout plus fort en demandes de pensions, ou de damages de trespas, ou de defamacion, mes es plez de correccions, ou len ne plede forqe sur amendement soulement dalme par issue de peine corporele, ne tient mie lu la roiale prohibicion.

[*Ch. VII.*] *Pur estatut des marchauns.*

Le novel estatut de dettes est contraire a droit, sicom piert el chapitre des contractz ; car chescun enprisonment de cors de homme est pecche si non pur torcenous jugement.[2]

[1] *Ne* with a capital.

[2] Corr. *emprisonment* (?).

out of place,[1] and they who avow it meddle so as to decrease the king's jurisdiction and belie their faith to the king.

The other articles, which would compel parishioners to enclose churchyards, to make oblations, to give mortuaries, to pay money for confessions, for the blessed bread, for the roofing of churches, for chalices, lights, holy vestments, or other ornaments of the churches, are founded rather on covetousness than on the amendment of souls, since the parsons of the churches are to be reprehended in this respect and not the parishioners, and are to be charged for these things to the extent of one-third of their tithes. As to tithes, note that so soon as they are offered to God they are things spiritual so that they may not be expended save in alms and for spiritual purposes and are not to be converted to lay uses; and therefore if any parishioner, to the wrong of the parson of the church, retains tithes, or subtracts them, or will not render them duly and fully, he is to be punished for this not by a pecuniary but by corporal punishment. From the excommunicated no money is to be demanded for their restitution to communion, no more than from a pagan or a Jew; and if money be demanded, then the prohibition is in place; and *a multo fortiori* is it in place if there be a demand for a pension, or for damages for trespass or defamation, but in pleas for correction, where the plea only makes for the amendment of the soul by means of corporal punishment, there the king's prohibition has no place.[2]

[*Ch. VII.*] *Of the Statute of Merchants.*

The new statute about debts is contrary to law, as appears in our chapter on contracts,[3] for every imprisonment of a man's body, unless it be for a wrongful [imprison-

[1] Translation doubtful. The text is corrupt.

[2] If this chapter be the work of an ecclesiastic or a canonist, he has shown a singular disregard for the worldly interests of his profession; in particular, when he throws all the expense of divine service on the parson to the alleviation of the parishioners.

[3] See above, p. 74. The new statute is the Statute Merchant, 13 Edw. I. See above, p. xxiv.

E dreit ne soeffre nul obligacion ne nul cont*ract* vicious p*ar* mesllure de pecchie. E pur ceo fet anienter q*ua*nqe sur pecchie est fundie, car a cel cont*ract* q*e* nul ne face pecchie de li memes ou a son p*ro*eine ne deit nul p*ro*dhome ne nul dreit assentir. Dautrepart si est il cont*rai*re a la g*ra*nde ch*ar*tre q*e* dist q*e* nul ne soit pris nenp*ri*sone si non p*ar* loial jugement de ses piers ou p*ar* lei de terre. E coment est tenable peine denp*ri*sonement quant ele ne se tient [1] en argent ?

Ici finist le mireour des Justices des droites leis [2] de p*er*sones solom les aunciens usages dengleterre.

[1] Corr. *sestint* (?) [2] A full stop.

ment], is a sin; and the law will suffer no obligation or contract that is vicious by reason of an intermixture of sin. And therefore the statute should be annulled as being founded on sin, for to a contract which obliges a man to sin against himself or his neighbour no good man and no law can assent. Further, it is contrary to the Great Charter which says, 'Nullus imprisonetur nisi per legale judicium parium suorum vel per legem terrae;' and how can the punishment of imprisonment [for debt] hold good when it does not issue in money?[1]

Here endeth the Mirror of Justices concerning the right Law of Persons according to the ancient usages of England.

[1] Translation doubtful. The text requires amendment.

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The volumes in course of preparation are

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This volume will contain those portions of Bracton's work in which he follows Azo printed in parallel columns with Azo's text. The use made by Bracton of the works of Bernard of Pavia and the canonist Tancred will also be illustrated.

A member of the Society has most generously promised to present this volume to the members.

Vol. IX., for 1895 (in the press). SELECTIONS from the CORONERS' ROLLS (Henry III. to Henry V.), edited by CHARLES GROSS, Ph.D., Assistant Professor of History, Harvard University.

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Of these valuable records but very few have as yet been printed. It is hoped that they will throw new light on the development of English "Equity." The petitions practically commence in the reign of King Richard II. Many relate to mercantile and shipping matters.

Vol. (nearly ready for press). SELECT PLEAS of the COURT of ADMIRALTY. Vol. II., A.D. 1545–1585, edited by REGINALD G. MARSDEN.

This will be in continuation and completion of Vol. VI., and will contain a further selection of interesting records and a summary of all the classes of cases dealt with by the Court during this period.

Vol. (in preparation). SELECT PLEAS from the RECORDS* of the COURT of REQUESTS. Vol. I., Henry VII. and Henry VIII., edited by I. S. LEADAM, M.A.

This Court, sometimes called the "Court of Conscience," was originally a Court of Equity for poor men's causes, but later it took cognisance of all suits that by colour of equity or supplication to the Prince could be brought before it. The President of the Court was the Lord Privy Seal, who was assisted by the Masters of Requests.

The following are among the Works contemplated for future volumes

Vol. . PLACITA FORESTAE.

The Forest Plea Rolls* are very interesting and little known. They begin as early as the reign of King John, and consist of perambulations, claims, presentments and other proceedings (such as trials for poaching and trespass on the Forest) before the Justices in Eyre of the Forest.

Vol. . MEMORANDA of the COURT of EXCHEQUER, A.D. 1199–1272.

The Rolls* of the King's Remembrancer and of the Lord Treasurer's Remembrancer throw the fullest light both upon the curious and intricate system of accounting at the Royal Exchequer and the far-reaching jurisdiction of the Court, together with its relation to the Chancery and the Courts of Common Law. They deal with matters of great constitutional importance.

* For further information on these Records, see the valuable and learned "Guide to the Principal Classes of Documents preserved in the Public Record Office," by S. R. SCARGILL-BIRD, F.S.A. (London, Eyre & Spottiswoode, 1891.)

Vol. . SELECTIONS from the PLEA ROLLS* of the JEWISH EXCHEQUER, A.D. 1244–1272.

These Rolls illustrate a department of the history of English law which is at present very dark. The Justiciarii Judæorum, who had the status of Barons of the Exchequer, exercised jurisdiction in all affairs relating to the Jewish community, namely, in the accounts of the revenue, in pleas upon contracts made between Jews and Christians, and in causes or questions touching their land or goods, or their tallages, fines, and forfeitures.

Vol. . SELECT PLEAS of the COURT of STAR CHAMBER. Henry VII. and Henry VIII.

The Records* of this Court consist of Bills, Answers, Depositions, and other proceedings. They are of great importance as illustrating both public and private history. None of the Orders or Decrees are known to exist. In the Report of a Committee of the House of Lords made in 1719, it is stated that "the last notice of them that could be got was that they were in a house in St. Bartholomew's Close, London."

Vol. . SELECT PLEAS in MANORIAL and other SEIGNORIAL COURTS, Vol. II.

Vol. . SELECT CIVIL PLEAS, Vol. II.

Vol. . CONVEYANCING PRECEDENTS of the THIRTEENTH CENTURY.

There are several interesting sets hitherto unprinted. The mercantile transactions are very curious.

Vol. . BREVIA PLACITATA, a book of precedents for pleading in the King's Courts, Thirteenth Century.

Vols. . The HISTORY of the REGISTER of ORIGINAL WRITS :

The reign of Henry III.
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* For further information on these Records, see the valuable and learned "Guide to the Principal Classes of Documents preserved in the Public Record Office," by S. R. SCARGILL-BIRD, F.S.A. (London, Eyre & Spottiswoode, 1891.)

The Society has also contemplated the collection of materials for an ANGLO-FRENCH DICTIONARY, for which practical instructions have been kindly drawn up by Professor Skeat. The Council will be glad to receive offers of help in this collection with a view to future publication.

The Council will be grateful for any information upon the contents and custody of any MSS. which may be of sufficient interest to be dealt with by the Society.

July 1895.

Selden Society.

FOUNDED 1887.

RULES.

1. The Society shall be called the Selden Society.

2. The object of the Society shall be to encourage the study and advance the knowledge of the history of English Law, especially by the publication of original documents and the reprinting or editing of works of sufficient rarity or importance.

3. Membership of the Society shall be constituted by payment of the annual subscription, or in the case of life members, of the composition. Form of application is given at the foot.

4. The annual subscription shall be £1. 1*s*., payable in advance on or before the 1st of January in every year. A composition of £21 shall constitute life membership from the date of the composition, and in the case of Libraries, Societies, and corporate bodies, membership for 30 years.

5. The management of the affairs and funds of the Society shall be vested in a President, two Vice-Presidents, and a Council consisting of fifteen members, in addition to the *ex officio* members. The President, the two Vice-Presidents, the Literary Director, the Secretary, and the Hon. Treasurer shall be *ex officio* members. Three shall form a quorum.

6. Until the Annual General Meeting in the year 1896 the following shall be the fifteen members of the Council:—The Hon. Mr. Justice Bruce, Mr. A. M. Channell, Q.C., Sir Howard W. Elphinstone, Bart., Mr. M. Ingle Joyce, Mr. B. G. Lake, Mr. H. C. Maxwell Lyte, Mr. A. Stuart Moore, Mr. R. Pennington, Sir F. Pollock, Bart., Mr. W. C. Renshaw, Q.C., Mr. S. R. Scargill-Bird, The Hon. Mr. Justice Stirling, Mr. J. Westlake, Q.C., His Honour Judge Meadows White, the Hon. Mr. Justice Wills, five of whom (in alphabetical order) shall retire at the Annual General Meeting in the year 1896, five (in the like order) in the year 1897, and the remaining five in the year 1898. At each subsequent Annual General Meeting the five members who have served longest without re-election shall retire. A retiring member shall be re-eligible.

7. The five vacancies in the Council shall be filled up at the Annual General Meeting in and after the year 1896 in the following manner: (*a*) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent

to the Hon. Secretary on or before the 14th of February. (*b*) Not less than fourteen days before the Annual General Meeting the Council shall nominate for election five members of the Society. (*c*) No person shall be eligible for election on the Council unless nominated under this Rule. (*d*) Any candidate may withdraw. (*e*) The names of the persons nominated shall be printed in the notice convening the Annual General Meeting. (*f*) If the persons nominated, and whose nomination shall not have been withdrawn, are not more than five, they shall at the Annual General Meeting be declared to have been elected. (*g*) If the persons nominated, and whose nomination shall not have been withdrawn, shall be more than five, an election shall take place by ballot as follows : every member of the Society present at the Meeting shall be entitled to vote by writing the names of not more than five of the candidates on a piece of paper and delivering it to the Hon. Secretary or his Deputy, at such meeting, and the five candidates who shall have a majority of votes shall be declared elected. In case of equality the Chairman of the Meeting shall have a second or casting vote.

8. The Council may fill casual vacancies happening in their number. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council shall also have power to appoint Honorary Members of the Society.

9. The Council shall meet at least twice a year, and not less than seven days' notice of any meeting shall be sent by post to every member of the Council.

10. There shall be a Literary Director to be appointed and removable by the Council. The Council may make any arrangement for remunerating the Literary Director which they may think reasonable.

11. It shall be the duty of the Literary Director (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

12. Each member shall be entitled to one copy of every work published by the Society as for any year of his membership. No person other than an Honorary Member shall receive any such work until his subscription for the year as for which the same shall be published shall have been paid.

13. The Council shall appoint an Hon. Secretary and also an Hon. Treasurer and such other Officers as they from time to time think fit, and shall from time to time define their respective duties.

14. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, to an account in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

15. The accounts of the receipts and expenditure of the Society up to the 31st of December in each year shall be audited once a year by two Auditors, to be appointed by the Society, and the report of the Auditors, with an abstract of the accounts, shall be circulated together with the notice convening the Annual Meeting.

16. An Annual General Meeting of the Society shall be held in March 1896, and thereafter in the month of March in each year. The Council may upon their own resolution and shall on the request in writing of not less than ten members call a Special General Meeting. Seven days' notice at least, specifying the object of the meeting and the time and place at which t is to be held, shall be posted to every member resident in the United Kingdom at his last known address. No member shall vote at any General Meeting whose subscription is in arrear.

17. The Hon. Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

18. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

March 1895.

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